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FEDERAL TRADE COMMISSION

REBATE DEBATE

San Francisco, California

Friday, April 27, 2007

9:00 a.m.

Official Reporter: Adrian Edler

For The Record, Inc.

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P R O C E E D I N G S**April 27, 2007****SAN FRANCISCO, CA****REBATE DEBATE CONVENED**

MR. GOLD: Hello, everybody. Could we get started? That was great.

Hi, my name is Matthew Gold, and I'm really excited to welcome everybody to the FTC's Rebate Debate. We've got a really exciting program scheduled here, and I'm really gratified to see such a wonderful attendance here. I think we're going to have a full house.

I've corresponded with quite a few of you over the last few weeks and months, and it's very gratifying for me to finally be putting some faces to names. And I hope all of you can introduce yourselves to me before the day is out, if we haven't met already.

As you can see from the agenda in your packets, we've got five panels today. There are three in the morning and two in the afternoon. And this agenda, by the way, is identical to the one that's been on our website for the last few weeks. So if you've seen that one, it's the same one.

The first four panels of the day are going to feature prepared presentations by panelists, and if everything goes according to plan there'll be some time for questions and answers at the end. During these first

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1 four panels, what we'd like you to do if you do have
2 questions is to use the question cards that are in your
3 packets. If you do, just jot down your question and
4 waive it in the air, and Linda Badger will be roaming the
5 aisles and you can pass it to her, and she'll get it to
6 the moderator. But don't worry, if there's a need for
7 extra question cards we've got more on the table over
8 there by the water.

9 In the last panel of the day there's going to
10 be a substantial period of time set aside for audience
11 participation also. That will be kind of an open mic, in
12 which you'll get a chance to make a comment or ask a
13 question of one of the panelists.

14 Everyone's input here is really important. I
15 know we have very limited spots as far as panelists are
16 concerned, and so unfortunately I had to turn down some
17 requests. But we really want your input, so it's
18 important for you to use those question cards, or
19 participate in the open mic at the end of the day.

20 Also keep in mind that there's a court
21 reporter, and so if you -- right up front, so if you are
22 speaking sometime during the day you're going to have to
23 talk through a mic so he gets -- so he hears what you
24 have to say. And also if you speak, please identify
25 yourself, that's important also. We will be, all the

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1 proceedings today will be transcribed and eventually
2 posted on the Rebate Debate website, so look for that in
3 the weeks ahead. The link to the Rebate Debate will be
4 directly accessible from the FTC's homepage for a period
5 of time also. And in addition, all of the Power Points
6 that are here today, that are presented today, will also
7 be on the FTC's on the Rebate Debate portion of the FTC's
8 website starting hopefully next week, but in any event,
9 soon.

10 Now, I just want to get to a few housekeeping
11 matters. Remember, please, that we are in a classroom at
12 San Francisco State University.

13 [Phone ringing.]

14 Hello? Hi, Lesley.

15 MS. FAIR: Could you remind people to turn
16 their cell phones off?

17 MR. GOLD: I forgot that one. Please everybody
18 turn off your cell phones. I'm doing that right now.
19 And that should have been my first housekeeping.

20 We're in a classroom, as I was saying, and just
21 keep that in mind because there are other classes going
22 on in the building, so when you're walking around the
23 halls or talking outside our classroom.

24 The restrooms are located either way down the
25 hall. I'm told that the ones to the right are a little

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1 larger, but if you go down the hall either direction
2 you'll find them.

3 Also, I'm sure you've all seen the literature
4 table outside. We've got a lot of brochures and other
5 items that may be of interest to you. One particularly
6 neat thing is the what we call the 'business briefcase,'
7 which is this. I imagine they're already all taken by
8 now. This is a little thing that looks like a business
9 card, but it's actually a CD with several dozen of our
10 most popular brochures on it.

11 And another item on there is our ID theft --
12 [microphone interference] -- I'll keep my arm down, is
13 our ID theft magnifying glass, and the magnifying glass
14 comes in very handy for looking at all that fine print on
15 the rebate forms.

16 Lastly, I'd like to introduce a few of the FTC
17 staff who are here today, so in case anybody has any
18 questions for FTC staff or just general orientation.

19 Linda Badger, you saw.

20 Dean Graybill, from our offices there.

21 Kerry O'Brien, is right there.

22 Evan Rose, is in front here.

23 And, Lesley Fair, who you've already heard talk
24 on the phone, is there.

25 And, Mitch Katz (phonetic), is here also, he's

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1 with our press office.

2 Thanks again for coming today.

3 And I would like to present now Jeffrey
4 Klurfeld, who is the Director of the FTC's western region
5 here in San Francisco.

6 [Applause.]

7 **WELCOMING REMARKS FROM THE FTC**

8 MR. KLURFELD: As Matthew indicated, I am
9 Jeffrey Klurfeld, and I have the honor and privilege of
10 serving as the Director of the Western Region of the
11 Federal Trade Commission. And I also welcome you to the
12 Rebate, which we are pleased to be hosting here in San
13 Francisco.

14 Over the years the Federal Trade Commission has
15 brought a number of enforcement actions to remedy
16 problematic rebate practices. Because consumer
17 complaints persist, however, we thought we might take a
18 different approach, and that is by bringing everyone
19 involved in the rebate process, from the manufacturers
20 and retailers who determine to offer the rebate, to the
21 fulfillment houses who perform the back office paperwork,
22 to the consumers who wait and sometimes wait and wait for
23 receipt of their rebates, to discuss problems and
24 solutions in a 360 degree forum or debate.

25 In hosting this forum, I'm reminded of an

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1 advice book that my wife made me read when we were
2 confronting the challenges of our three somewhat
3 exuberant adolescent children. And the title perhaps
4 expresses some of the themes in the debate of rebates,
5 and perhaps also some of the perceptions regarding the
6 role of government. The title of the book is, *Get Out Of*
7 *My Life, But First Can You Take Cheryl And Me To The*
8 *Mall?*

9 [Laughter.]

10 MR. KLURFELD: You thought these were going to
11 be just dry, desicated, opening remarks. Since this is
12 also an election season I thought I might also introduce
13 some presidential history into my remarks that might also
14 reflect this tangent, and hopefully these anecdotes will
15 also entertain you.

16 When I think of free and competitive markets I
17 immediately think of Theodore Roosevelt, who was really
18 larger than life and truly a champion of vigorous free
19 markets. And as you know, he was apostrophized as the
20 "Trust Buster." Indeed, his daughter Alice, whom Teddy
21 could not manage, although he could manage the
22 government, perhaps, and whose antics would have made her
23 the poster kid for a tabloid press if there had been one
24 at that time, she remarked that her father wanted always
25 to be the bride at every wedding and the corpse at every

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1 funeral.

2 His cousin, Franklin Roosevelt, might be placed
3 at the other end of the spectrum. Franklin loved
4 regulating the economy and imposing codes and other
5 government restrictions on entire industries. But
6 Franklin got his comeuppance, and not just from the
7 Supreme Court. He often was at the receiving end of
8 Eleanor's, his wife, her rapier wit. And here is a true
9 story. After FDR's first election he took residence in
10 the White House. Eleanor thought it would be desirable
11 to get a physical check-up, and at that time there wasn't
12 a physician who was resident in the White House, so she
13 had to go out of the White House, which she did. After
14 returning from her appointment she went to see Franklin
15 in the oval office. He asked her if everything had gone
16 well, "yes," she said, then Franklin asked her if the
17 doctor had said anything about, quote, "her big fat ass."
18 Without missing a beat, Eleanor replied, "No, Franklin,
19 your name never entered the conversation."

20 [Laughter.]

21 MR. KLURFELD: Now, I have a housekeeping
22 detail, and that is -- whoops. It's part of my duties to
23 animate and pump you up in the morning. We really do
24 want to hear from all of you, and we have designed a
25 rebate form of our own, hold it up, it's in your packets.

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1 And what we would like you to do is to fill it out, and
2 you will notice that there are a place where you can
3 indicate what your three biggest gripes are with rebates.
4 It's essential that you provide this to us, if you are
5 willing to do so, in anticipation of the last panel, when
6 we are going to reveal the results. You can either put
7 it in the boxes, which Matthew will now point to.

8 MR. GOLD: One right over there by the water,
9 and one on the other box on the tables over there.

10 MR. KLURFELD: I have the honor of, you know,
11 turning the letters to get a vowel, or something like
12 that. Or you can give it to Kerry, Linda, or Matt, whom
13 I also would like to recognize for their yeoman-like
14 work, as well as other members of my staff, in organizing
15 this.

16 So before you go to lunch, if you could
17 complete that out and give it to them, that would be
18 great.

19 And then I am also privileged to introduce our
20 first speaker. She is Eileen Harrington. Eileen is the
21 Deputy Director of the FTC Bureau of Consumer Protection
22 in Washington, and in that capacity she is the nation's
23 number two consumer protection enforcement official. Her
24 presence here today is eloquent testimony to the
25 importance of this event. Often people do not live up to

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1 their reputations when you get close. In Eileen's case
2 this is certainly not true. She personifies intelligence
3 and insight, she also has grace and gumption, and the
4 American people is indebted to her for her strong and
5 able leadership. Among her many distinctions is her
6 service to America for her role in establishing the
7 national Do Not Call Registry, and that is a gift that
8 continues to give, as we know.

9 Anyway, it's my pleasure to turn the podium
10 over to Eileen.

11 [Applause.]

12 MS. HARRINGTON: Thank you very much, Jeffrey.

13 I'll just get the mic up here. It really is
14 such a privilege to be here today with all of you. And I
15 want to begin by echoing and maybe even elaborating on
16 what Jeffrey said about the incredibly good work that the
17 team that has organized, that really conceived of this
18 gathering and has put it together, have done: Matthew
19 Gold, Linda Badger, Kerry O'Brien are the rebate team in
20 our western regional office. And they, although we all
21 serve the public and we are one FTC, I would say they own
22 this issue and have done such good work developing
23 principles, reaching out, learning, listening, and
24 leading.

25 And so I want to commend them as well as my

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1 other colleagues who are playing leadership roles here
2 today: Joe Mulholland from our Bureau of Economics is out
3 from Washington; Lesley Fair, who is simply the most
4 talented person at the Federal Trade Commission in a
5 whole stable of talented people there's nobody like
6 Lesley, as you will see later on; Mitch Katz is here from
7 our Office of Public Affairs; Dean Graybill from our
8 western region also will be presenting today. And if
9 I've left anyone out in terms of the leadership group, I
10 apologize. But what a good group, Jeffrey, you and Erica
11 have here.

12 We're here today to do two of the things
13 that -- to serve two of the functions that the Federal
14 Trade Commission carries out that we value highly and
15 take seriously. One of those is to study the
16 marketplace, to understand what it is that's happening,
17 to learn from people who are directly effected and are
18 participating, so that we can do our jobs better. And
19 the other function that we are here to carry out, and
20 that we take so seriously, is our function in the area of
21 education: educating ourselves and educating business and
22 consumers about problems of deception and unfairness and
23 how to avoid those.

24 This is one of many workshops that we're
25 holding during this season at the FTC. We recently just

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1 earlier this week held a very important workshop in
2 Washington on authentication of identity in connection
3 with our work in the identity theft space. A couple of
4 weeks ago the Commission held a very important three-day
5 workshop on energy, also in Washington. Within the next
6 couple of months we'll be holding an important spam
7 summit, and an important workshop on childhood obesity
8 and food marketing, those also in Washington.

9 This session is special and unique because it's
10 here and it's not in Washington. This is the first of
11 our workshops of this sort to be held outside of the
12 beltway, and I think it really is a credit to the
13 leadership and the staff in the western region that we're
14 here doing this. It's a really smart thing to do, to do
15 this here. But for Washington bound people letting go is
16 not an easy task. And so I think it really is a
17 wonderful compliment to the folks here in the western
18 region that this is happening here. It's about time, and
19 I'm really glad to be here with all of you.

20 Now, we use generally a three-prong strategy to
21 learn and address issues in the consumer protection area.
22 And today we're actually seeing all three prongs. I've
23 mentioned studies, I've mentioned education. The third
24 prong, and one that we use to further our education
25 mission, as well as to correct deceptive and unfair

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1 practices in the marketplace, is the enforcement prong.
2 And this morning I am announcing that the FTC has reached
3 and is issuing today two consent decrees with companies
4 to correct deceptive or unfair practices that they
5 engaged in, we allege, in connection with rebate offers.
6 And Matt has the press releases, which he'll be passing
7 out so that you can read them, and pay absolutely no
8 attention to what it is that I'm about to say.

9 [Laughter.]

10 MS. HARRINGTON: The first of the consent
11 agreements that we're announcing this morning is with
12 InPhonic, which is the largest online seller of cell
13 phones and cell phone calling plans. The settlement with
14 InPhonic stands for the principle that consumers must be
15 put on notice in advertisements that offer rebates that
16 the terms of the rebate program may be unusual,
17 complicated, significantly different than what a consumer
18 might reasonably expect from reading the advertisement of
19 the rebate offer.

20 Now, in this case, InPhonic offered attractive
21 prices, often free phones. Unfortunately, there were
22 some material requirements that reasonable consumers we
23 believe would not have anticipated, and that InPhonic did
24 not adequately disclose in the advertisement. One of the
25 principal problems with the advertisement and the failure

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1 to adequately disclose, was with the hyperlink on the
2 website to the terms and conditions of the rebate offer.
3 The hyperlink did not satisfy the Commission standard for
4 adequate disclosure under Section 5. The best
5 articulation of that standard is in some work that really
6 was groundbreaking, that was done as a result of this
7 kind of workshop that the Commission held in 2000, and
8 that resulted in the development of a really important
9 publication, *The Dot Com Disclosure Guide*, which is in
10 the business briefcase that we have out front. So if you
11 haven't picked up that little disk that Matthew held up,
12 do it, and look at the *Dot Com Disclosure Guide*, because
13 in this case that is really the basis for the
14 Commission's analysis that the disclosures were not
15 adequate.

16 Let me read to you from the *Dot Com Disclosure*
17 *Guides*, which say that, 'you have label the link to
18 convey the importance, nature, and relevance of the
19 information it leads to. That is, the label should make
20 clear that the link is related to a particular
21 advertising claim or product, and indicate the nature to
22 be found by clicking on it. Some text links may provide
23 no indication about why a claim is qualified, or the
24 nature of the disclosure. In most cases simply
25 hyperlinking a single word or phrase in the text of an ad

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1 may not be effective. Although some consumers may
2 understand that there is additional information
3 available, they may have different ideas about the nature
4 of the information and its significance. The same may be
5 true of hyperlinks that simply say disclaimer, more
6 information, details, or terms and conditions.'

7 Here the hyperlink basically said, 'Rebate
8 Offer.' It wasn't enough, it wasn't enough to alert
9 consumers to the nature of the terms and conditions that
10 came with this order, which included a requirement that
11 consumers had to wait for to submit their rebate claim
12 for between 180 to 210 days, would have to submit a
13 number of bills, would have to fill out a form providing
14 significant information including emails addresses and so
15 forth. You can read about the case in the press release
16 and online. But it's an important case that, once again,
17 stands for all of the principles that the Commission
18 articulated in the *Dot Com Disclosure Guides*.

19 The second settlement we're announcing this
20 morning is with Sanyo -- Soyo, I'm sorry, excuse me. If
21 anyone is here from Sanyo I am really sorry.

22 [Laughter.]

23 MS. HARRINGTON: The Soyo settlement -- and is
24 there anyone here from Sanyo this morning? Hands, hands,
25 did you just have a heart attack?

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1 The Soyo settlement stands for the principle
2 that rebate delivery promises have to be met. The
3 promises you make you have to keep them. Now, the
4 Commission has made this point in earlier settlements and
5 it restates it in this case, where the promise was that
6 consumers would receive their rebate within ten to twelve
7 weeks. Ninety-five percent of consumers who receive
8 rebates in this promotion received them outside of and
9 beyond the twelve-week outer limit that was promised.
10 The average was twenty-four weeks, and some waited for a
11 year. Not good.

12 Now, we are very proud of our folks in the
13 western region who did these cases. The Commission will
14 stay on the beat in this and other areas, but really
15 would be happy to never again bring another rebate
16 enforcement action. And that's why we're here. We want
17 to understand from the people who are most knowledgeable
18 what the best practices are. We want to talk about how
19 the best practices might get even more best. We want to
20 understand what the consumer perspective is. And we want
21 to, as Jeffrey said, work with all of the stakeholders to
22 see to it that rebate offers which have tremendous
23 benefit for manufacturers, for retailers, for consumers,
24 alike, are made in a way that satisfies the promise and
25 does not cause us down the road to have to announce more

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1 enforcement actions.

2 So I'm delighted to be here. I look forward to
3 learning a lot today. And we'll turn it over to the
4 first panel.

5 Thank you so much.

6 [Applause.]

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1 **PANEL 1: AN OVERVIEW OF REBATES**

2 MR. MULHOLLAND: Good morning. I'm on? Okay.
3 Good morning, I'm Joe Mulholland. I'm an economist at
4 the Bureau of Economics and the Federal Trade Commission.
5 And I'll start off by saying I too would like to thank
6 Matt, Linda, and Kerry for putting together this
7 conference and for inviting me out here to moderate.

8 The issues raised by rebates are important and
9 have a good deal of economics content. The Bureau of
10 Economics hosted a conference last week that featured a
11 number of prominent behavioral economists who discussed
12 the research into various psychological aspects of
13 consumer behavior, and the policy implications of the
14 findings for consumer protection policy. One important
15 area of research involved the way consumers make correct,
16 incorrect, and often overly optimistic projections of
17 their future behavior. One manifestation of which, of
18 course, is the failure to follow through on the initial
19 intention to redeem a rebate.

20 This first session here seeks to set the stage
21 for the ensuing discussion of the various policy issues
22 involved involving rebates by describing how rebates
23 work, how they evolved, how they're used by consumers,
24 and how they effect the profitability of the various
25 stage of the product stage chain.

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1 I think our three panelists are ideally
2 situated to provide this kind of overview for this
3 session. We're going to first of all look at consumer
4 behavior, how consumers respond to rebates, and how often
5 they redeem, why they redeem, why they don't redeem. The
6 second then is going to look at the rebate processing
7 process. And then the third is from the standpoint of
8 the rebate issuers, what are their motivations for
9 issuing rebates in the first place.

10 Our first presenter is Tim Silk. He's an
11 Assistant Professor of Marketing at the Sauder School of
12 Business at the University of British Columbia. Tim is
13 an expert on consumer behavior related to rebate
14 promotions, in particular the ways in which offer
15 characteristics interact with behavioral biases to
16 influence purchase and redemption behavior. Tim recently
17 received his PhD in marketing from the University of
18 Florida. Which I think is quite important, his academic
19 work is complemented by his prior career in business,
20 where he was a marketing manager for a Canadian beverage
21 company, and an account manager for an advertising
22 agency.

23 So, Tim, please?

24 MR. SILK: Can you hear me okay? Great. Thank
25 you for the opportunity to speak. I'm trained as a

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1 consumer psychologist, and what I really care about is
2 understanding what drives people's purchase and
3 redemption behavior in the rebate context.

4 So I'm going to show you results from two
5 sources of data. I've got some industry data, over 3,000
6 promotions which can give insights into incremental sales
7 and redemption. And then I run some experiments with
8 people, with their own real money, with over 1,000
9 consumers trying to look at what mechanisms are kind of
10 influencing their purchase decisions and their redemption
11 behavior.

12 So I'm going to start off here with some
13 industry data. Sorry. Whereabouts is the? Oh, I didn't
14 see that. Right there? Oh, all right, very good, okay.
15 So what I'm going to show you first is some industry data
16 from over 3,000 promotions. Sorry for the feedback here.
17 Okay. Can you hear me still? Okay.

18 So what we have here, we have the percent
19 sales. So this is basically what the industry will call
20 lift or increase in sales. And what I'm plotting here is
21 the lift that occurs from a \$1 rebate. What I have along
22 the bottom here is what that \$1 rebate represents as a
23 percentage off the list price. So down here we have say
24 a 25 percent discount, which means it would be a \$1
25 rebate on a \$4 offer. Here we'd have a 50 percent

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1 discount, so it would be a \$1 rebate on a \$2 offer,
2 etcetera. And what you find here is people are very
3 sensitive to the change in the discount percentage. So
4 this is still all just a \$1 offer, but as that \$1
5 represents a greater percentage of the list price people
6 respond to that offer.

7 Now what we're going to show next is what
8 happens when you increase the absolute size of the rebate
9 and go to a \$5 offer. And what we'd expect is we'd see a
10 big jump in lift because it's five times larger the
11 offer. What we find is there is an increase, but it's
12 not a very strong increase. It's significant, but the
13 point here is that it kind of shows the same pattern as
14 the \$1 offer. So people are incredibly sensitive to the
15 percentage of the list price that the rebate represents.
16 [Tape interference.] Jesus, sorry. Very sensitive. But
17 they're not that sensitive to the absolute value.

18 And so here's the \$10. Of course, you don't
19 see a lot of \$10 offers that represent more than 50
20 percent of the list price, which is why it just stops
21 here. And then there's a \$20 offer.

22 So the point here is that it's the percentage
23 of the discount, not necessarily the absolute value of
24 the rebate that seems to be driving the incremental
25 sales. All right. And that they're increasingly

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1 sensitive to changes in the percentage. So as you move
2 up the curve it's not only positively slow, but it's
3 arching more and more up. All right.

4 So what this is telling us is that we could try
5 and infer that perhaps this is because consumers have a
6 tendency to frame rebates as a percentage discount. They
7 look at the size of the offer, they look at the list
8 price, and that's what they're sensitive to. And so the
9 implication here is that people are going to be more
10 responsive when the discount is high, so a \$5 rebate on a
11 \$10 item is going to create more lift than a \$10 rebate
12 on something that's twice the size but that as a smaller
13 discount percentage. So the thing -- this is from
14 industry data.

15 What I want to do now is let's take a look at
16 some experiment results and figure out, well, how do we
17 figure out what's actually driving the purchase behavior,
18 and what time of things can we influence when we change
19 the offer characteristics. So what I've done here is run
20 a series of experiments where I have experimental
21 control. I manipulate the offer characteristics while
22 holding everything else constant, so I can really get out
23 what's going on. And one thing I find is it's the
24 confidence that they have that they will redeem that
25 really drives a purchase decision. I ask consumers right

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1 when they're making their purchase decision with their
2 own money in a natural context, how likely are you to
3 redeem this rebate? How confident are you that you
4 would, on a zero to a hundred percent scale? And what we
5 find is the people that are buying are incredibly
6 confident, and the people that aren't buying obviously
7 are kind of moderately confident.

8 Now that doesn't seem that surprising.
9 However, there is a point of view up there that consumers
10 view rebates like an option, in that it's an option that
11 you could or could not take up. And what this is telling
12 you is that for the incremental buyers, the people that
13 otherwise would not buy, only those that are extremely
14 confident are buying, so they're not treating these
15 things as an option. That's the point here. All right.

16 We also asked people, all right, you're really
17 highly confident, maybe it's because you think redemption
18 rates are really high on these things, and that's what's
19 driving your confidence. So we ask them, what do you
20 think the average redemption rate is on this particular
21 rebate that you're buying? And the response was around
22 54 percent. And so they're basically saying I understand
23 that the redemption rate my guess is probably 55 percent,
24 but I'm 95 percent confident that I'm going to do it.
25 Now there's nothing wrong with that, as long as you

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1 follow through. And we'll look later if they do. All
2 right. And there's no difference obviously between the
3 buyers and those that aren't, in terms of what their
4 estimates of redemption rates is. So this overconfidence
5 or this confidence isn't stemming from some inaccurate
6 perception of what redemption rates are in the
7 marketplace. Okay. So it's what we call it's not a
8 false consensus of fact.

9 So sorry for the -- it's from the mouse. So
10 what drives purchase? And purchase is a function of
11 really manipulating confidence. So what things can we do
12 to manipulate confidence? So one thing we found was if
13 we increase the percentage of the discount a higher
14 proportion of people buy. So this is actually the
15 proportion of potential consumers that actually bought
16 the rebate offer. And here we have a 45 percent rebate,
17 or 75 percent rebate. The confidence results, which I
18 won't show you, there's just too much data to show, go in
19 line with this. And what we're really doing, by
20 manipulating the size of the discount percentage what
21 we're really doing is manipulating the confidence, and
22 that's manifesting itself in purchase behavior. All
23 right.

24 The other thing we did is we manipulated the
25 length of the application deadline, how many days they

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1 had from buying the offer to mailing. And when we give
2 people more time they become more confident. So, again,
3 confidence goes up and as a result you see higher
4 purchase rates. And so what you've got here is over time
5 as you increase the time you've got more people buying,
6 but there's also the effect of the size of the discount
7 percentage maintained. All right.

8 So you can either increase the size of the
9 discount percentage, you can also give people more time.
10 And the point here is that people tend to discount effort
11 that occurs in the future. When things are 21 days away,
12 ah, no problem, it seems easy, you know. What we call a
13 temporal construal effect in psychology, that explains
14 when things are far in the future we basically abstract
15 them and they seem really easy. All right.

16 The other thing which I won't show on a graph
17 here is if you conceal the application requirements
18 people become more confident and they're more likely to
19 buy. So I manipulated whether or not there was a
20 detailed description of all the things they had to do to
21 redeem the rebate, whether that was present or absent
22 when they made the purchase decision. And when you
23 disclose what's required to be done confidence drops,
24 less people buy. Okay. So the point here is that when
25 you don't disclose the effort it's not salient. And

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1 combine the fact that if it's far in the future it seems
2 really easy. So you really do have to give consumers,
3 you know, really detailed information in order for them
4 to really improve their calibration.

5 So the question now is what drives redemption
6 rates? So the point here is being highly confident
7 doesn't necessarily predict your redemption behavior. So
8 what I've done here is I've grouped the people that
9 actually were successful in redeeming in dark, the people
10 that weren't successful redeemers in light blue. And if
11 I go back and say well maybe the reason that they didn't
12 redeem was that, sure average confidence was high, but
13 the people that didn't redeem were probably lower in
14 their confidence than the ones that were successful. And
15 we find, no, that's not the case. There's no difference.
16 So being highly confident is not predicting what you're
17 going to do. The people that failed to redeem were just
18 as confident as those that were successful. All right.
19 And when we look at their redemption rate estimates,
20 again, there's no difference.

21 So this is what we call like a mis-calibrated
22 consumer. You're highly confident, but your own
23 probability of redemption is in fact very low. All
24 right. And so this is an overconfidence problem.

25 And so the question is, what's driving

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1 redemption behavior? How do we influence whether or not
2 they really redeem? So one way we can influence
3 redemption behavior is increasing the rebate dollar
4 value. Now here this is where the effect of the dollar
5 value actually shows, and it's not about the discount
6 percentage. So here again is our graph -- this is from
7 real world data, all right, same axis, but except here
8 now we have the redemption rate. And on the \$1 offer,
9 yeah, the redemption rates actually are higher as the
10 size of the rebates a larger discount. But now we start
11 to see much stronger effects of the size of the rebate.
12 Okay. So on the redemption side the dollar value of the
13 rebate is having a big effect, where that was muted on
14 the purchase side. Okay.

15 So it suggests there may be some type of
16 reframing. At the time of purchase people look at things
17 in terms of a percentage discount, but when they get home
18 and look at the effort it's really about how much is it
19 worth versus how much work it is, and now we see an
20 effect of the size of the rebate.

21 The other thing is we play with that deadline,
22 that also influences redemption behavior. Now this is
23 what's interesting. In industry surveys with managers we
24 ask them if we give people more time to redeem do we
25 expect the redemption rate to increase or decrease. And

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1 they say it will go up, we're giving people more time,
2 they'll get to it. We find the exact opposite. If you
3 give -- this is a controlled study with real people's
4 real money -- if we give people more time to redeem the
5 redemption rates go down, it's pretty strong effect. And
6 the question is, well why is that? That doesn't make any
7 sense. You're telling me the people that we only gave
8 one day to redeem the redemption rate's much higher than
9 if we give them three weeks? And it's like absolutely.

10 And so the idea here is what you do here is you
11 give people a long time you basically foster
12 procrastination and forgetting behavior. All right. And
13 I'll show you that in a minute. Longer delays, when you
14 give people more time they take longer before they start
15 the application process. Let me show you this, what this
16 is is the number of days that elapse between buying and
17 initiating the application process. What they had to do
18 in our studies was go online to download an application
19 form. That was the absolute first step to redeeming. So
20 we know how long it took them between purchase and
21 initiating that first step.

22 And the people on the 21 day condition are
23 taking over 4 days before they even go and get the form.
24 What's interesting is when you look at the delay between
25 starting and finishing the application process, and so we

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1 look at the postmark date, look at how long people are
2 taking. Not only are they waiting 4 days before they
3 start, but then they wait another 12 days on average
4 before they finish. Versus the people that are only
5 given a day, they go and they get the form that day and
6 they tend to mail it. Obviously there are some people
7 that fall outside, they were late. But that's what's
8 interesting, you're fostering delays. And that's what's
9 kind of driving it.

10 The other thing we found is owner redemption
11 requirements, you think well if I increase effort you're
12 going to basically decrease the redemption rate. And
13 what we found is the opposite. Here's the same graph
14 before, when we increase the effort the redemption rates
15 went up, not down. And the reason for that is people
16 were buying, the effort was not disclosed, and when they
17 actually experienced the high effort we angered them.
18 Like, God damnit, I'm going to make sure I get my money,
19 these guys are making me do too much work.

20 [Laughter.]

21 MR. SILK: And the evidence we have for that is
22 that those delays I showed you decrease. When we give
23 people -- this is the delay when we increase the effort.
24 There's no difference in when they start the process, why
25 is they haven't experienced any effort yet. But once

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1 they start and they realize, wow, how much work it is,
2 they get done sooner, they don't delay in finishing the
3 process. So there's a backlash effect.

4 I've got to wrap up. So I'm just going to go
5 to the last points here. I'd be happy to talk with any
6 of you if you have questions.

7 Repeat purchase. Among redeemers it was 40
8 percent. We had people return and had a chance to
9 purchase the same offer again. So we wanted to look at,
10 you know, do you learn from your mistakes. Non-
11 redeemers, only 8 percent of those bought. But the
12 people that were successful, 40 percent of them bought.
13 If you're in the high effort group you're much less
14 likely to buy.

15 So the point here is that if you're ranking the
16 effort up on people there's an opportunity that you could
17 actually be increasing your redemption rates, rather than
18 decreasing them, and then you're angering people and
19 they're not buying the second time around. So there's no
20 loyalty.

21 So just to wrap up. Confidence in redeeming
22 drives purchase. Consumers tend to be overconfident,
23 it's a function of the discount percentage, the deadline
24 length and the disclosure of the application
25 requirements, many fail to initiate the application

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1 process. And so maybe we're over-emphasizing the role of
2 effort here. Much of breakage comes from people that
3 never initiate the process, they didn't experience any
4 effort. So increasing or decreasing the amount of work
5 they do won't influence those people because they're not
6 even starting the process.

7 And then high-effort rebates can be risky, can
8 motivate higher redemption rates, there's a backlash
9 effect that we found, repeat purchase, less likely.

10 But when we disclose the effort required that
11 backlash effect goes away. Why? We're not violating
12 expectations, people know what they're getting into.

13 So sorry for to rush through that. But I'd be
14 happy to speak with any of you. And for those of you in
15 industry, love to hear of your results show these
16 patterns or if they differ. Thank you.

17 MR. MULHOLLAND: Now we're going to talk about
18 the nuts and bolts of the fulfillment process itself for
19 rebates. And here is Tom Diffley. Tom is Executive
20 Vice-President of Business Development at Helgeson
21 Enterprises. He has ten years of experience in promotion
22 fulfillment with multiple service providers, providing
23 directly -- working directly with large and small
24 retailers, and market package goods, consumers
25 electronics, and wireless services.

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1 MR. DIFFLEY: Good morning. My name's Tom
2 Diffley, and I have been in promotion fulfillment for the
3 last ten years. So I thought I would start by
4 introducing you to promotion fulfillment. And there are
5 a number of terms that we use within our industry that
6 you may or may not have heard before. So I thought it
7 might be helpful if we would start with those.

8 First of all, customers are the people with
9 whom we are interacting, as opposed to the general pool
10 of consumers. You can think of a customer as somebody
11 who has actually made a purchase from one of our clients.

12
13 A client are the people who hire us. And in
14 most cases they are manufacturers, service providers, and
15 retailers or E-tailers. And these are also companies who
16 fund the rebates. So they are the people, they are the
17 people who are paying the customers.

18 Fulfillment company, what we are, we are the
19 third party who processes the request from the customers
20 and we ship whatever it is that the customer wants back
21 to those customers. We're also known as fulfillment
22 houses, fulfillment services providers, or FSPs, and
23 we're also simply called rebate processors.

24 Promotions are what these customers get
25 involved in. And I specialize in consumer-based

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1 fulfillment and consumer-based promotions. There are
2 other types of fulfillment out there. But these
3 consumer-based offers call to action the customer to buy
4 a product or service right now. These are also called
5 promos, offers, deals, rebates.

6 And a rebate is a particular type of promotion
7 where the customer receives a rebate check or a rebate
8 card back by mail. These are also called MIRs, or mail-
9 in rebates.

10 And a premium offer is a slightly different
11 type of offer, and that's where the customer receives an
12 item back by mail, or I guess via any courier. But this
13 is as opposed to a rebate check.

14 And then invalid submissions are submissions
15 that we have received from customers, but the customers
16 didn't do everything that they were supposed to do. This
17 is as opposed to customers who simply didn't participate
18 in the process. But these customers who have mailed to
19 us and didn't do what they are supposed to do, those
20 submissions can be called invalid, disqualified,
21 unqualified, rejected, non-compliant, a number of
22 different expressions. But they all mean the same thing.

23 First of all, what are fulfillment companies
24 and what do we do? We get involved when our clients or
25 our prospective clients want to run a promotion and they

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1 require a third party like us to process the submissions.
2 The companies running rebates typically don't have the
3 facilities or the interest or the systems in place to
4 process rebates, so they hire us to take over that, to
5 take over all that interaction with the customer. And
6 what we do, is we set up all of the different customer
7 contact points. So where the customer may believe that
8 he or she is dealing with a manufacturer or a service
9 provider or a retailer or E-tailer, they are actually
10 dealing with us.

11 So we are the PO Box, we are the telephone
12 number, the email address. And we are also the
13 organization corresponding with the customer, so we are
14 the ones sending the checks, we are the ones sending the
15 reject letters, and we're also the ones sending the
16 status update email messages.

17 So we are, or we attempt to be, in most cases
18 transparent to the customer. But we are serving as the
19 manufacturer or the service provider in our interaction
20 with the customer. We are providing support for that
21 customer typically in three different ways and at three
22 different points. Before the customer submits, we
23 provide support via telephone and the web. After a
24 customer submits, we also provide support via telephone
25 and the web, and this would be a customer who is seeking

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1 a status inquiry. And then after a customer has
2 participated we also support that customer via the phone
3 or via the web. And if the customer has made a mistake
4 we help that customer understand what the requirement was
5 that he or she missed, and we help him or her get the
6 materials together.

7 There are a few things that we are not. We are
8 not the organization that creates the promotion. Our
9 clients create the promotions. We are not out there, in
10 most cases, actively promoting promotions. Typically our
11 clients and prospective clients come to us with a need
12 already.

13 We do not make the rules for qualification. We
14 follow the rules. We can advise our clients on how to
15 set up the rules to make things less burdensome for the
16 customers, and make it a more pleasant experience. But
17 ultimately it is the client who makes that decision.

18 I'm not advancing.

19 We do not have a financial stake in the
20 promotions. And I read on, I read on blogs, I read just
21 a number of different things out there, even some
22 published statements by politicians, that seems to imply
23 that we have some motivation to disqualify customers who
24 send in. We process submissions, and it isn't of any
25 interest to us whether the customer qualifies or

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1 disqualifies, we are process -- or we are paid to process
2 submissions and take telephone calls. So whether we are
3 mailing a check or whether we are mailing a reject letter
4 to that customer is immaterial to us. We will get paid
5 either way.

6 And also I get all sorts of telephone calls
7 from prospective clients, from the press, people asking
8 me -- they almost always lead with the same question,
9 especially the press -- and the question is what
10 percentage of customers respond to a rebate offer. And
11 we're just, we're very mediocre resources to give this
12 particular answer. And the reason is we know how many
13 pieces of mail we see on an offer, but we don't know what
14 the sell-through was, with the exception of certain types
15 of offers where the client is the retailer or the E-
16 tailer. But asking us to project what a response rate
17 would be is extremely difficult.

18 In most cases history is the best indicator for
19 any client or prospective client. If they've been
20 running rebates in the past they will begin to understand
21 what their response rates are.

22 Where did rebates come from? I've been in the
23 industry ten years and I can tell you what I think, where
24 I think they've come from, although Hal is in a better
25 position to tell you where they have. If we take a look

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1 at rebates today we're probably all thinking about
2 consumer electronics and rebates on hardware and software
3 and even wireless services. But rebates have been around
4 for quite a while. We just don't see many of them today
5 on some of these products that used to be rebated pretty
6 often.

7 If we go back a few years ago, wine and spirits
8 were typically rebated, automotive was very popular, very
9 high volume rebates. And also even packages goods. If
10 you walk through a grocery store ten years ago you would
11 see many, many mail-in offers on the shelves or
12 advertised. And that's simply not a place where you see
13 mail-in offers advertised today.

14 Did these offers evolve from premium offers --
15 did rebates evolve from premium offers? I don't know.
16 But there were, well, these offers still exist today, but
17 there was something pretty common when I was a kid, and
18 that was you save up the proofs of purchase off your
19 cereal box and you send in the, you send in your shipping
20 and handling and you get back your Tony the Tiger. Which
21 is what I did in second grade, and then about a week
22 later it was stolen, and that is an event that still
23 stings today.

24 [Laughter.]

25 MR. DIFFLEY: But fulfillment companies were

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1 shipping and handling. When you took a look at the 1.95
2 to get the Tony the Tiger pack to you, or the 3.95, that
3 was, that was our part of it. So the 3.95 was our
4 shipping and handling and we were shipping and handling.

5 It's also possible that they've evolved from
6 try-me-free offers, which were pretty common with
7 packaged goods, where if you bought two of the packaged
8 good you would get the cost of one of those back by mail.
9 And it's possible that you folks who offer consumer
10 electronics products saw those offers, saw they were
11 effective, and just got rid of the whole buy two of them
12 and get the cost of one back by mail.

13 And then also I think they've evolved from
14 coupons. And that it's coupons are a promotional tool
15 that were simply not available with some of these
16 consumer electronics retailers up until even just a few
17 years ago.

18 In the last ten years I've seen a number of
19 changes with mail-in rebates. Years ago the rebate
20 amounts were quite small, it was very common to see one
21 \$2 to \$10 rebates. You may see a few of those today.
22 But for the most part the rebate amounts are considerably
23 higher now.

24 There's another type of offer which is pretty
25 common now, too, and those are rebates on services, as

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1 opposed to just rebates on products. And with services
2 will typically come probation periods where you ask the
3 customer to wait a period of time to prove that you are
4 still on contract, or a customer in good standing, before
5 you're eligible for the rebate.

6 Ten years ago there was another type of
7 promotion, which was you would mail away for a kit, or
8 you would mail away -- what was really popular was
9 mailing away for a cookbook. Some of these offers would
10 take place around the holidays, they were extremely high
11 volume offers. And that type of promotion has
12 essentially been eliminated by the web. There is
13 absolutely no need to mail away for those items any more.
14 You can go download those items on the web now.

15 Ten years ago there were, there were
16 essentially a lack of, well, the technology didn't exist
17 to communicate with a customer in a couple of additional
18 ways that we're able to do today. For example, IVR
19 wasn't as popular, so we're now able to make IVR
20 applications available to customers so that they can call
21 us and check their status.

22 Pushing email status to customers ten years ago
23 was virtually unheard of, but seven years ago began to
24 show up. And then of course web status, where the
25 customer is able to check the status by themselves.

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1 And this is something that I find is almost
2 ironic, but the same small office home office products
3 that have become so popular with rebates, and that have
4 been the highest volume rebaters, are actually the
5 products, and the services that made it possible for
6 customers to voice their concerns about rebates.

7 And on average what I watched, in a well-
8 constructed offer roughly 90 percent of customers will
9 qualify. In other words, if we receive 100 pieces of
10 mail about 90 percent of those pieces of mail will
11 qualify. And I haven't seen that number change much over
12 the past 10 years.

13 And then I can speculate a little bit about how
14 rebates will continue to change, at least some things
15 that I hope are going to change. I hope that clients
16 will -- our clients will continue to fund rebates faster
17 so that we can get checks out to customers more quickly.

18 There is a great deal of pricing pressure on
19 us, the fulfillment companies. So I suspect that we'll
20 see more and more outsourcing of various parts of our
21 process.

22 Premium items today exist, but I think they're
23 almost going to go away. A couple of different factors:
24 their shipping expense, the availability of the product.
25 Now let's say laptop batteries, for example, are really a

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1 good premium offer that still exists because they're
2 highly complementary to the product that was originally
3 sold. But as the production of those batteries gets
4 outsourced getting a hold of those batteries on short
5 notice becomes more difficult.

6 I think that prepaid rebate cards will replace
7 some checks. You know, checks have been around for a
8 long time, they're quite established. We haven't had
9 much that's novel, and it looks like rebate cards could
10 be something novel and exciting.

11 And then I also think that retailers and E-
12 tailers are going to control more of the rebate process.
13 And we're seeing quite a trend in that direction today.

14 Thank you.

15 [Applause.]

16 MR. MULHOLLAND: Thanks, Tom.

17 Our next speaker is Stuart Patterson, who is
18 Senior Counsel at Hewlett-Packard. Stuart has worked at
19 HP since 1997. Prior to that he practiced in San
20 Francisco with the predecessor firm to Bingham McCutchen.
21 Before law school at UCLA he worked on the legislative
22 staff of Senator Bob Packwood and especially in regard to
23 the commerce committee jurisdiction.

24 MR. PATTERSON: Good morning. Am I better
25 there? Great, thanks. Apart from that I'd like to thank

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1 Matt and Kerry and Linda and Joe for inviting me here to
2 speak. I didn't realize they were turning people down
3 for panels, or I might be out there with you. And things
4 like that.

5 I've been asked to kind of come and comment
6 about ten reasons why, why do we do this, and what
7 motivates us from a manufacturer's perspective and
8 things. You've gotten a lot of insight already from the
9 previous speakers.

10 The thing and in Tim's position, the first
11 reason, and by far the most powerful reason is what we
12 call demand generation. If the three rules of real
13 estate are location, location, location, the three rules
14 for us as rebate providers is demand generation, demand
15 generation, demand generation. To draw attention to your
16 products to increase sales to get the lift that Tim
17 talked about.

18 I also wanted to touch on why we do it. Also I
19 will be speaking to some of the challenges we see when we
20 do it. We obviously want to do it. They allow us to
21 target and see a return on an investment on an effort, on
22 a promotion. What do you get back for what you've done.
23 You see the lift and you can measure it and quantify it.

24 It's challenging to administer, because one
25 reason we're here debating, consumers sometimes find the

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1 process frustrating.

2 We also in a regulatory environment have not
3 only the Commission watching us, but numerous state
4 regulators and enforcers, and a plaintiff's bar looking
5 at you carefully. And there are numerous state statutes
6 around price optics and things, so things you can do in
7 general you'd like to nationwide you have to watch your
8 marketing collateral. HP is gifted with a very vibrant
9 and lively channel, which helps us a great deal with
10 that, because they actually practice and work in those
11 areas and can often inform us of those concerns.

12 And speaking of that, I would note as I got
13 here without the hearing the FTC standard disclaimer
14 about things. I would offer one of my own, I'm going to
15 do my best to answer your questions and talk about our
16 practices. I have some limits around confidentiality and
17 privacy of our resellers and customers that may limit
18 what I can say here today, or how far my comments might
19 be read.

20 Number two, is the competitive response.
21 What's going on there is not only that boy we're doing it
22 because my brother's doing it, and I know how much Lesley
23 and Eileen love hearing that explanation. But it also
24 goes into the area of rebates allow somebody,
25 particularly with a long lead time and sell-in, like with

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1 a lot of our products, to react to things in the
2 marketplace. Someone may be coming out, someone who may
3 have provided this laptop to the FTC. Because of the
4 nature of their selling motions on the internet can price
5 and do things much more dynamically than somebody who
6 operates primarily through a channel.

7 So throwing a rebate at something, promoting it
8 and developing it allows you to help respond to pricing
9 pressure and makes of technology that's out there.

10 That's something that's very important to us.

11 Number three, improve and change the customer
12 experience. This touches on what Tom was talking on of
13 premium products primarily. A lot of our rebate offers
14 when they were premiums in the premium area give you a
15 taste or example, a prime example is an HP media pack of
16 new and different paper. Maybe you will use your
17 technology in a way you hadn't envisioned before. Maybe
18 we'll give you some software that will expand the time
19 you spend with it, and surprise and delight you with how
20 you'd do it.

21 I would take a little issue with one of the
22 things Tom said about the web doing it in because it's
23 downloadable. I would agree the web has contributed to
24 why you're seeing fewer of these, at least from us. One
25 thing is they are very hard to manage because the web,

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1 it's very hard to control your target and demand on it.
2 Word gets out about these things. And we have had a lot
3 of dissatisfaction from our channel and from customers
4 when you run short of the product. And even when you
5 follow your mail order rule and do everything and notify
6 you're going to get it to them, if people want their
7 Halloween cookbook and pumpkin printing card ideas they
8 really, you know, and marketers heard me explain this,
9 they don't want it in November. Right? So it is a risk
10 and a dissatisfier.

11 One way in wish fulfillment is being taken out
12 of the premium thing is not only is are we cutting down
13 on it, but we're trying to do it more at the reseller
14 point of sale level. So you may come to the checkout
15 with a qualifying purchase, and actually handed the kit,
16 so you get it right there, and we can keep a much better
17 tap on the amount and numbers of it, as well as
18 expectations.

19 The other way to do it, the other reason we do
20 it, that's very big for us, is a long line of consumer
21 and small medium business products is to expand your
22 product line and extend it. HP has moved into digital
23 photography with a vengeance. We have Snapfish kind of
24 things. When you buy a printer you may be offered a
25 hundred free prints, or a discount or something of that

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1 nature. It's a way also in a bundled rebate to bring
2 somebody in and offer a new experience for them.

3 Challenge products. [Microphone interference.]
4 Am I too soft or too loud? It's just me, okay.
5 Challenge products. This is a euphemism for when we have
6 a miss. You may have a forecasting error, you may have a
7 signal that isn't correct from the market and something
8 comes out. You need to move product to get somebody new
9 in.

10 Tom mentioned the automotive industry. We're
11 all familiar with the year-end rebates that come in from
12 that thing. It's no different in consumer electronics.
13 We want to bring something out and push it in, it may be
14 the competitor has landed with something that's more
15 dynamic. So that may be something where you want to get
16 a rebate in there as well. Life cycles really do drive
17 us.

18 [Microphone issues.] No problem. Is that
19 better? Okay, great.

20 See HP technology. It will work for you.

21 So the other big one my previous panel members
22 have touched on is what we call 'customer touch.' This
23 is it gives you an opportunity at all levels when you
24 offer a rebate to have some interaction with the customer
25 at the reseller level. If someone comes in and inquires

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1 about an advertised or promoted rebate it allows their
2 customer service representative to say, hey, you know,
3 you're interested in that, here's a complimentary
4 product, or here's something else that may help a
5 talented reseller who manages a market basket approach to
6 a customer a way to maximize their interest, and
7 hopefully add greater services or products to what their
8 customer might be leaving their store with.

9 For us, obviously, and again mindful of
10 concerns over consumer privacy, and HP is a strong opt-in
11 company, you checked off the box and hopefully you will
12 invite us to entice you with more rewarding and
13 delightful offers about the product you just purchased
14 from us, and you'll do that as part of the rebate
15 service.

16 Tom also talked about web fulfillment. And
17 that interaction where you're now being sent messages
18 back and forth, it's an idea to show you that we progress
19 and care. And the point was also made about particularly
20 in technology products we give you the means to
21 communicate with us and talk with us about it, and
22 customer touch in developing some of the ways to help
23 teach you and familiarize you with the capabilities of
24 your product.

25 Market expectations. This is a kind of general

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1 rationalization for you do it so long that everyone
2 expects you to do it. Again, rebates in the auto
3 industry is a prime example. Being invited to come speak
4 at this panel has caused me to focus a little bit more at
5 where I'm hearing these offers. A couple of weeks ago
6 during a spring break drive, I don't know whether this
7 was a national or regional campaign, but a car
8 manufacturer was putting an ad out playing on the sound
9 frogs made of ribbets, ribbets -- rebate, rebate, rebate,
10 to try and get people to come in. And I listened to it
11 several times in the course of a lengthy drive, never
12 heard the amount, you know, just the fact we're offering
13 it that is going to get you to come in and hopefully
14 think about this spring purchase of a new car. And
15 that's just one example of it.

16 Sometimes we assume we're going to rebate
17 because we do it so often, and I see the business people
18 make the calculus wait a minute, this product doesn't
19 need this or it's not wrong -- it's not right at this
20 time, we can go forward and do it. But you actually get
21 into an area of expectations.

22 And then you get into customer and distribution
23 partner demand. I don't know if Tim had it in the rest
24 of his slides, and I don't have an analytical approach to
25 it, but as somebody who has been working in this area for

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1 well over seven years, I am amazed at hearing why people
2 submit rebates and what they do with them. And we get,
3 you know, we do get complaints, plenty of them. But we
4 also get lots of thank you's. And it is fascinating to
5 me how internal domestic economics, you know, somebody --
6 we have acquaintances who use it to fund college
7 education. I find that not advisable, but interesting,
8 interesting.

9 [Laughter.]

10 MR. PATTERSON: There are others who use it for
11 a night out, you know, comes in, thank you, kind of
12 thing. Also people who count on it. Again, in a
13 business like ours with a consumable business attached to
14 it to fund the next purchase of the consumable, and it
15 kind of makes them feel better about spending that kind
16 of money on that. Just kind of interesting.

17 Finally, or not finally, next, the brand.
18 Classic area here is bundled rebates, where if you can
19 present a compelling package of rebates to a reseller or
20 to customers you might draw more attention in a Sunday
21 circular, you might draw it in store. It might be
22 very -- somebody might realize, oh HP, they do hand-helds
23 as well. The Commission knows all about that. But you
24 have a chance to kind of hopefully aggregate your share
25 of eyeballs or your share of customer awareness.

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1 It's something as an adult survivor of a
2 kitchen remodel, why all the appliances in my kitchen I
3 couldn't make a decision, but oh there was a group rebate
4 on it.

5 Being it's time to wrap up. The final one is a
6 marketing alliance idea. The best example in technology
7 that many of you are familiar with, and regulators are
8 familiar with, is the internet service provider offer
9 that drew a lot of attention at the height of the dot com
10 boom, and continues, that you try and partner with
11 another brand that's on the move or on the rise, and it
12 shows that you are compelling and interesting in today's
13 market.

14 Many of you have one of these. I'm holding up
15 a cellular telephone. For the record, that is turned
16 off, Lesley. And you're aware that you see the service
17 provider and the handset provider put something together
18 to kind of make a really compelling choice in that kind
19 of thing.

20 So the final thing to wrap up, for those of you
21 who are bored in your next conference call, go to
22 YouTube, search the word *rebate*, and you'll see something
23 that will touch on Tom's point about how long these have
24 been around. And, again, observe all intellectual
25 property laws. You will see a Bill Cosby ad for a Texas

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1 Instruments personal computer touting a mail-in rebate.
2 It's got to be early Cosby Show era, and he's sitting
3 there and the bulk of the commercial is explaining how to
4 file for a rebate, like you call, and it's totally
5 different from where consumers are now. And thinking
6 about it you'll also see a Portugese hand game called
7 *Rabatae* (phonetic), and then you will, you will also see
8 a five-minute seven-second blues jazz riff from a
9 disgruntled customer of a cellular telephone rebate,
10 which is entertaining, and, again, puts something towards
11 the manufacturers of something else we need to be aware
12 of of how someone can comment on what we're doing.

13 Thanks

14 [Applause.]

15 MR. MULHOLLAND: Thanks, Stuart. We're going
16 to open it up for questions. And I wanted to start with
17 a visitor.

18 MR. SYME: Thank you very much. My name is
19 John Syme, I'm a lawyer with the Department of Justice
20 from Canada. And I had a question for Professor Silk in
21 relation to how consumers value rebate offers as compared
22 to offers of a straight sale price type representation.
23 And I'm wondering whether or not there are any studies
24 that look at that issue, and look at sort of transaction
25 utility in terms of, for example, on a given product

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1 whether or not a consumer would value a rebate offer of
2 say 40 percent at say and compare that to say a 30
3 percent or 20 percent straight sale price offer on that
4 same product.

5 MR. SILK: To my knowledge there's nothing
6 that's done that. I've run some studies where I had the
7 same percentage off, and I ran it as a sale versus a
8 rebate. Because I was wondering if there's a perception
9 that rebates are offered on inferior products. And I do
10 get that. I asked them what you think this product is
11 really worth that's less when it's a rebate than when
12 it's a straight sale. But I don't know why that is. But
13 it's not a strong effect. And it's definitely something
14 we're studying, it's just lower down on the list of the
15 things that we had on priorities. But if I find out more
16 about it I'll definitely let you know. But unfortunately
17 to my knowledge no one's really done that.

18 On the quantitative side, we would like to get
19 data from firms or from retailers where we can look at
20 equivalent coupons versus rebates, versus straight
21 discounts, and really look at how sales lift is affected
22 by the format of the discount delivery. But, again, we
23 don't have data on that. If anyone wants to provide it
24 we can definitely look at it.

25 MR. MULHOLLAND: I have one question for Stuart

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1 and Tom, and that's in regard to the incentive structure
2 that fulfillment houses have. Could you talk a little
3 bit about how that works? In other words, how does like
4 your client monitor your performance in regard to say the
5 rate say rejects that you have? Or exactly how does that
6 work, and does it vary among different fulfillment houses
7 and manufacturers?

8 MR. DIFFLEY: I'm sorry, I don't understand.

9 MR. MULHOLLAND: Well, what I'm thinking of is
10 the example I'm thinking of is say in the automobile
11 dealer, as far as warranty repairs are concerned, there
12 has to be some sort of check there or the dealer just
13 everything that comes in they call it a warranty work and
14 they go ahead and do it. And is there some way or other
15 that how they monitor your work? Let's say if you went
16 ahead and accepted every single rebate offer that came
17 in, as opposed to rejecting a certain number of them, is
18 there some feedback you get from them regarding the
19 percentage of rebates that you reject?

20 MR. DIFFLEY: Our clients can and do audit
21 frequently, and they're looking at a couple of different
22 things. They're looking at the quality of our data entry
23 work, and then they're also looking at the speed of our
24 work. But the way that we communicate the quality and
25 the service to the client in between audits is through

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1 reporting. So this data is available to the client at
2 all times. And part of it is reinforced through the
3 invoicing process, because when we're looking for funding
4 we have to provide invoices to the client for those
5 customers who've qualified as well as the supporting
6 documentation or, yeah, I guess the supporting data, for
7 those qualifying customers.

8 Does that answer the question?

9 MR. MULHOLLAND: Yeah, okay.

10 MR. PATTERSON: So I guess my answer is pretty
11 much the same. I mean, we manage our rebate vendor of
12 which there is normally primarily only one, for
13 simplicity sake, in the consumer space at least. You
14 know, there are regular audits to see how well they're
15 performing and how soon we're getting things out. There
16 also are regular I think they may be weekly now, I don't
17 know, they may be less, on if issues crop up, you know,
18 with -- the complexity is really the hidden issue in a
19 lot of these issues I talked about bundling and branding
20 and things like that. And if we have a miscue we may
21 know to, wow, that's coming in low, you want to lower
22 your throttle on the qualified, you know, and allow more
23 qualifieds to go through. That's just good business.

24 Back to the customer touch point, I obviously
25 it's news to me the Soyo decision. But the comment I

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1 would make to that kind of treatment to customers is you
2 are serious about your brand and in your interest it is
3 far less expensive to pay a rebate to a nonqualified
4 person than to anger a customer who potentially needs to
5 come back and buy your brand again. And that tends to be
6 our philosophy going forward with the eye towards there
7 is the issue on the other side of consumer fraud. That
8 there are people who are brilliant at working ours or our
9 fulfillment house's systems to get more than they're
10 entitled to by leaps and bounds. So it's a tension
11 there.

12 MR. MULHOLLAND: We have room, we have time for
13 one more question. Is there any question from the
14 audience?

15 MR. GLASSER: Well, first I'd like to just say
16 very quickly to Mr. Silk -- I'm sorry? Oh yes, Roy
17 Glasser, E-journalist and consumer advocate.

18 First, I got to speak very quickly to Mr. Silk.
19 I was very impressed with everything you said, but my
20 research doesn't match yours.

21 I find that there are three types of rebate
22 people. One of those, one is people who are buying
23 something they really need like a washing machine or a
24 refrigerator, and their response is going to be one kind.
25 The second kind of rebate are the free after rebate, and

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1 the response from that is going to be much higher. And
2 the third kind I would refer to simply as the casual
3 rebate, and that kind of response is going to be much
4 lower, some of those people don't care. And in both of
5 the last two categories there are people who specifically
6 are looking at the price because -- I'll get to that in a
7 moment, but they are looking at the price and decide to
8 buy solely on the price instead of and knowing they're
9 not going to submit the rebate.

10 As far as the price goes, I see that even
11 though items are coming up for sale and it's illegal to
12 change the list price for the sale, the list prices are
13 being changed for the sale, as though there's a
14 difference in mark. Sometimes it goes up, sometimes it
15 goes down.

16 I'd like to speak very quickly now to
17 Mr. Diffley. You said that you don't have an interest in
18 disqualifying rebates. You're an exception, sir. Some
19 of the rebate processors advertise the high rejection
20 rates as high as 25 percent that they have, in order to
21 solicit business. I don't want to mention a company
22 because someone from Parago will be here speaking, but
23 this is happening, and not just from one company.

24 So if I could? Well, I've taken up enough
25 time. Somebody else wants to speak.

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1 MR. MULHOLLAND: Well, thank you very much.
2 This marks the end of this session. I'd like to thank
3 all three panelists. I think this was very informative.

4 [Applause.]

5 MR. MULHOLLAND: And very much sets the stage
6 for the remaining sessions. We'll take a 15 minute break
7 now. And I would remind you again about filling out that
8 survey, because that would really help for the afternoon
9 session. 10:30.

10 Okay, 10:30, please for coming back.

11 (BREAK)

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PANEL 2: REBATES: OPEN THE ENVELOPE AND CUT THE

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1 **CHECK: WHAT COULD GO WRONG?**

2 MS. O'BRIEN: -- Federal Trade Commission, and
3 also the moderator of our next panel. And just to let
4 you know, again, all the PowerPoint presentations will be
5 on the website as soon as we can get our act together
6 tomorrow. So you'll all be able to see them.

7 And I have a question for you. When consumers
8 send in their rebate forms, I mean they are just not
9 confident they are going to get their rebate check in the
10 mail. And I guess the answer to my question, you know,
11 is why is this, why is this happening. I think it's
12 either the reality, well, it's certainly the perception
13 that everyone's had a bad experience with rebates, or
14 they certainly know someone who has.

15 And this panel is going to explore situations
16 where rebate offers have gone bad, or may go bad. And
17 hopefully the panel will set the stage for some of our
18 later panels that will talk about solutions to some of
19 these potential problems.

20 With me today is Joe Ridout. He's with
21 Consumer Action. Consumer Action is the national non-
22 profit education and advocacy organization. And it's
23 been advancing consumer rights for three decades,
24 something like that, three and a half decades. And
25 during this panel Joe's sort of our voice of the

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1 consumer.

2 We also have with us Hal Stinchfield, who is a
3 recognized expert in the field of rebate advertising.
4 Currently he's working as a consultant working with
5 marketers to develop and deliver more consumer-friendly
6 rebate offers. So Hal today is sort of our eyes of the
7 industry.

8 And finally, with us is my colleague Dean
9 Graybill of the FTC. And he's going to be giving us a
10 sort of law enforcement view of rebate advertising, and
11 explain some of the bad consequences that can be
12 [microphone interference] that fail to keep their rebate
13 promises.

14 Of course, we all know the saying we learn from
15 our mistakes, and hopefully during this panel we'll be
16 able to learn from the mistakes of others.

17 So without further ado, I'll put on Joe,
18 [microphone interference] before I get electrocuted.

19 MR. RIDOUT: Good morning. Can everybody hear
20 back there? Might give it a little more. Thanks a lot
21 for having me. It's a great honor to be here. My name's
22 Joe Ridout. I'm with Consumer Action, as was mentioned.
23 We're a consumer defense and education group that sends
24 out about two million pieces of free information to
25 consumers and other groups all over the country, and up

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1 to eight different languages every year.

2 We also maintain a hotline that receives a lot
3 of complaints, or other kinds of comments from consumers
4 about what they're experiencing in the marketplace with
5 different companies. And rebates is one of the areas in
6 which we hear a lot of different stories from consumers.

7 So I'm here to talk a little about the consumer
8 side of the rebate experience, some problems that can
9 arise, and what to do about it. I guess one thing we
10 hear sometimes is that when there's a product defect
11 rebates can be a dicey proposition, like with that
12 microphone there. So hopefully this was not ordered on
13 rebate.

14 [Laughter.]

15 MR. RIDOUT: Rebates have been characterized at
16 times, at different times a tax on the disorganized, a
17 reasonable tradeoff of consumer's time for money. Or
18 sometimes when things go bad, as a ripoff that wasn't
19 worth the time and aggravation that was invested in the
20 process. Unfortunately, many consumers sometimes come
21 away with the experience of rebate, emphasizing the
22 'bait' part of the rebate, and it leaves a bad taste in
23 one's mouth who's been denied a rebate that they felt
24 they were entitled to.

25 Retailers at times see rebates as attractive.

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1 We're seeing a couple of retailers getting out of the
2 rebate business, but many retailers still see rebates as
3 attractive because they get to induce sticker swoon, the
4 opposite of sticker shock, and entice consumers into
5 buying products they might not always have been disposed
6 to do so. Retailers can reap the benefits of advertising
7 a lower price than they necessarily have to deliver to
8 everyone.

9 Consumers for their part can find a terrific
10 deal on certain items, but they often face a series of
11 confusing and irritating obstacles in order to claim
12 their rebate. For example, a rebate customer customarily
13 must save the receipt, obtain the proper form or forms,
14 fill out the paperwork completely, enter the product
15 codes or offer codes, dissect the box the item came in,
16 and submit the proper UPC code, send in all the
17 documentation under the deadline, wait for a check to
18 arrive months later probably will look a lot like junk
19 mail, and then cash or deposit the check before it
20 expires in a short amount of time. So consumers are
21 faced with what seems at times like an endurance race of
22 hoop jumping, and it's not a surprise that problems arise
23 along the way.

24 It's no secret that many rebate companies try
25 to encourage mistakes on the part of consumers. We

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1 recently saw on the part of Parago, the company behind
2 Circuit City rebates, receive patent number 7120591 for a
3 rebate processing system. This is from the application:
4 'The rebate processing system provides a user friendly
5 interface, yet retains hurdles sufficient to maintain
6 breakage.' Breakage, of course, rebate denials.
7 Consumers do make mistakes, and that's a lot of the
8 reason why rebates go bad, to be sure. But that's just
9 part of the story. And there are a lot of companies
10 spending a lot of time and money trying to maximize how
11 many of those mistakes consumers can make, and increase
12 breakage, or rebate denials.

13 This is more from the application. 'By
14 requiring post-purchase activities, the rebate offer
15 attempts to reduce the number of successful rebate
16 claimants.' And it goes on, 'Because rebate programs
17 offer the potential for breakage, manufacturers can offer
18 more valuable rebates compared to a straight reduction
19 product price.'

20 So it's no secret. Some rebate companies
21 freely admit that they are in the business of
22 discouraging or denying rebates, as much as they are in
23 the business of fulfilling rebates. And to be sure, some
24 consumers are trying to game the system as well. It's
25 not as though there's one party completely out to dupe

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1 the other, it's more the system being a game than
2 consumers or the industry trying to game the system.
3 There's a number of consumer websites out there, for
4 example, that try to identify free after rebate items, or
5 even unusual circumstances where someone could actually
6 make money by buying a product, presuming that all the
7 rebates go according to plan.

8 So sometimes, in some ways rebates can
9 represent a strange convergence between consumers who
10 want something for nothing and companies who want to give
11 nothing for something that they promised as part of the
12 original deal. So not surprising, this leads to a lot of
13 problems. And I'll go into discussing how these impact
14 consumers, and what we've heard from people about these
15 experiences.

16 As I said, we maintain a hotline at Consumer
17 Action where people call in and report what kinds of
18 experiences they have, negative or positive. Some of the
19 main rebate issues we hear are about items that were
20 purchased as a gift, and they failed to qualify for the
21 rebate because the original box went to the gift
22 recipient, and they were unable to redeem their rebate.
23 Rebate checks that were supposed to be mailed within say
24 three months and arrived say nine months. These are all
25 garden-variety complaints. We get forms that were

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1 properly completed but then denied.

2 Some of the more interesting ones involve a
3 problem with the packaging or lack of information about
4 what the rebate form should include. We heard from one
5 consumer recently who bought a memory card and was
6 eligible for two different \$20 rebates. On each form he
7 had to put the serial number of the card. He couldn't
8 find out where exactly the serial number was, so he
9 included the number on the side of the box thinking it
10 would be the best solution. It turned out the number was
11 etched on the card itself, and it was a number you
12 couldn't actually see with the naked eye, you needed a
13 magnifying glass to see it. So better disclosure in
14 these kinds of cases about where to put the pertinent
15 information on rebate forms is really the least we should
16 expect going forward.

17 Some consumers, it's interesting, find rebate
18 forms so confusing and so intimidating that they enlist
19 the help of salesmen of the product at the point of sale
20 to help them fill out the rebate forms. And this, in
21 itself, can create more problems should the salesman fail
22 to fill out the form properly himself. Because we've
23 heard, like I said, we've been hearing increasingly from
24 consumers who have tried to get someone where they bought
25 the cell phone or bought the computer to fill out the

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1 form for them because the consumer approaches sometimes a
2 rebate with the sense of impending disaster, and they try
3 to minimize the chance of that. But sometimes the
4 salesman makes the same mistake filling out the wrong
5 forms, switching a number, in this case the same result,
6 a denial is what happens to the consumers.

7 And if the rebate is so confusing that people
8 at the point of sale can't fill them out properly, here
9 we have a serious problem, and there's no reason that
10 these kinds of problems should be affecting people, if
11 people even selling the products are having difficulties
12 filling out the rebate form.

13 We heard a little earlier about how rebate
14 companies are replacing check rebates with prepaid gift
15 cards. It's certainly a trend that we're hearing about.
16 And some consumers have been frustrated by this, because
17 for example in California many people are aware or
18 they've heard that gift certificates can expire in
19 California. But they're not aware that bank-issued gift
20 cards can, they certainly can, they usually begin to
21 expire after six months, and that's the case with most of
22 these prepaid gift card rebates as well. So many
23 consumers are surprised to see their rebate dying a slow
24 death when they thought it was just a gift card, a credit
25 card, that would be just as useful and have the same

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1 longevity as a normal credit card or normal gift
2 certificate from a store. That's not the case. And it
3 takes some people by surprise.

4 I should add there's been something of a
5 backlash against rebates lately. Best Buy and Office Max
6 are examples of a couple of retailers who really have
7 washed their hands of rebates and have tried to get out
8 of the business, because they found that so many consumer
9 complaints were beginning to drag down the retailer's
10 reputation. Others like Staples have moved towards
11 processing rebates electronically, and removing some of
12 the possibilities for things to go wrong. And really all
13 rebates could be processed online. Although as I'll
14 mention in an example in a second about how merely
15 including an electronic component of submitting your
16 rebate does not guarantee it's going to be any easier for
17 the consumer.

18 But more than the kinds of outright fraud or
19 deliberate denials of rebates that were properly
20 submitted, we hear more about ingenuous ways in which
21 people can trip up, or rebate forms that have devilish
22 little details that people often have great difficulty
23 following.

24 We heard from Eileen Harrington earlier about
25 the case of InPhonic and Wirefly, and we heard a lot

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1 about these guys as well. They were offering substantial
2 rebates for purchasing a cell phone, often \$200 or \$300,
3 and the catch was the rebate form had to be submitted no
4 later than seven months, and that sounds pretty fair.
5 But the problem was it couldn't be submitted any sooner
6 than six months. So it was a maddeningly small window,
7 and it was one of those offers that not surprisingly led
8 to widespread denials. There's a saying in the tech
9 industry, it's called, 'Broken As Designed,' Broken As
10 Designed. And this is a good example of a rebate that
11 was broken as designed. People were not supposed to
12 complete this, and it was designed with the intent of
13 maximizing denials, rather than maximizing fulfillments.

14 We've been getting a lot of complaints about
15 some -- a problem with direct rebate processing company
16 called OnRebates. And it's interesting because this kind
17 of represents a strange convergence between mail-in
18 rebates and the new electronically-submitted rebates.
19 With some of the OnRebate submissions they really are
20 kind of like a Frankenstein-like hybrid of the worst
21 elements of a mail-in rebate and an electronic rebate.
22 The way it works with many of the rebates is the consumer
23 has to go online, fill out a complex registration form,
24 and then receive an email from the company acknowledging
25 that the registration's complete, email the company back,

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1 then return online to complete that part of the
2 registration process. But at that point they have to
3 print up a rebate form, they have to fill it out
4 manually, they have to cut out the UPC code, and guess
5 what, they have to mail in all the documentation anyway.
6 This is something that really doesn't serve the consumer
7 at all, and it's really a good example of traps being set
8 in the way of the less-sophisticated rebate submitter.

9 So even when we have an electronic component
10 that doesn't necessarily guarantee it's going to be any
11 more user-friendly. And the OnRebate example is
12 something that we take note of.

13 The same company, it's interesting, too, they
14 coincidentally they offer an option to process rebates
15 more promptly in which basically they rebate back to
16 themselves a portion of the rebate the consumer is
17 entitled to. For about 10 percent of the rebate OnRebate
18 promises to expedite the rebate processing, and from what
19 we understand it really does expedite it significantly.
20 But frankly, if this option's available it should be
21 available to everyone, and it's deceptive to offer it
22 only to those who are willing to pay 10 percent of the
23 rebate back to the rebate company.

24 Consumers also have privacy concerns. People
25 feel sometimes like they're giving away their personal

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1 information without a lot in it for them. Sometimes that
2 personal information can be just as much value as the
3 rebate itself.

4 But we're encouraged by what the FTC is doing
5 to defend consumer rights. We're very encouraged by the
6 steps they've taken that were mentioned earlier this
7 morning. We're also encouraged by some state actions,
8 such as New York with AB8436 that requires strict
9 deadlines for sending rebate checks, requiring forms to
10 be more accessible to people who want to fill out rebate
11 forms, and that companies have to accept copies of
12 receipts rather than original receipts. These are fairly
13 common sense solutions that can help consumers avoid
14 these kinds of problems.

15 I should add that consumers themselves have
16 been taking matters into their own hands to some extent.
17 Consumer-generated websites like Fat Wallets, Slick
18 Deals, or Rebate Place, all have helped share in
19 disseminating information about how to contact rebate
20 fulfillment houses, tips on how to make sure your rebate
21 gets to the finish line, and which companies tend to
22 cause the most problems, so that some of these problems
23 can be avoided or at least identified.

24 So that's about all I have here. And I thank
25 you very much.

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1 [Applause.]

2 MS. O'BRIEN: Next will be Hal. So thank you.

3 MR. STINCHFIELD: Today I'll give you a brief
4 introduction of my background, so that you can see the
5 perspective from which I'm looking at this topic. We'll
6 talk about some of the most common misconceptions about
7 rebates; consumer and marketer challenges with rebates;
8 some of the fulfillment provider issues; what I think
9 needs to change in order to help improve this process;
10 and when a marketer knows that they're headed for
11 trouble.

12 I'll start by dispelling any rumors and suggest
13 that, yes, I have been in the business for 30 years.
14 And, frankly, the Federal Trade Commission was not
15 interested in all in rebates when I began, and there's a
16 very good reason for that. Rebates were a quarter, that
17 was a 25 cent piece. Our biggest issue in that day, by
18 the way, was when a quarter got sealed into a coin card,
19 inserted into a number 7 envelope, and labeled on the
20 outside of it, and somewhere in the mail stream someone
21 would take that envelope and slug it like that and make
22 the quarter come out the other end and that was a mail
23 theft, and that was about it. So there wasn't much fraud
24 back then.

25 I have managed over 50,000 rebates and consumer

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1 promotions for the Carlson Marketing Group; as an equity
2 partner for Young America; also for Boomerang Marketing,
3 which was an E continuity startup, which was the original
4 transmission of proofs of purchase over the web; and also
5 as the senior vice-president for Marketing Services. And
6 today my interest is on educating marketers on how to do
7 a better job with these offers so they can increase their
8 efficiency, effectiveness, customer satisfaction
9 (inaudible). Clients include Symantec Corporation,
10 United Health Care, Lorillard, PayPal, Pfizer, and a few
11 others.

12 There is one project that I'm working on right
13 now that's kind of interesting. I'm working for a prime
14 contractor to the federal government on a one billion
15 dollar initiative for the NTIA, that's going to give us
16 two \$40 coupons when our televisions go dark February 17,
17 2009.

18 My memberships are Promotional Marketing
19 Association, as well as The Society of Consumer Affairs
20 Professionals.

21 One of the most common misconceptions about
22 rebates is that they're somehow inherently problematic,
23 that rebates are bad. That's not what I'm finding. The
24 problematic issues and the problems are not because of
25 the fact that they are a rebate. They are not tactic-

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1 specific, they're not marketer-specific, and they're not
2 retailer-specific. They're all program-specific, and
3 every program is different. And so they have to be
4 analyzed on a one-on-one basis. So all this hubbub about
5 the consumer complaints and what not are somewhat
6 generalized. And we can go through some examples there.

7 All problems and all issues are emanated from
8 offer structure, offer communication, and offer
9 execution. I'm sorry HP is in the room right now, but
10 this could have been anybody's, as could the next
11 subsequent six slides. So try to disregard the names
12 here. But when I first looked at this I saw that I could
13 buy a monitor for \$599, but after a \$350 rebate I could
14 actually get it for \$199. And the fact of the matter is
15 that that's not true. I have to buy the monitor, I have
16 to buy the tower, I have to buy a printer, I have to buy
17 Turbo Tax, and probably submit my first born in order to
18 get that down to \$149. Now this may not be considered
19 deceptive by the Federal Trade Commission, but I can
20 assure you that in many state jurisdictions it is in fact
21 illegal, just by the way it's positioned. And so we want
22 to watch out for offers like that.

23 This next one is extraordinarily challenging
24 for consumers in the software space, where a lot of the
25 software folks were saying, free, free, free, free, free,

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1 but if you read the fine print down below here you find
2 out that you not only have to purchase their product and
3 submit their proof of purchase, but you may have to
4 submit a competitive proof of purchase from a product
5 that you purchased over a year ago. I can't find
6 receipts of purchases I made last week, let alone a year
7 ago. So I say that that's a little difficult, especially
8 in a condition where it's in such fine print here that
9 you're telling the consumer here that they can get it for
10 free. Sure they can get it for free if they submit their
11 proof, the receipt, and the receipt from a previously
12 purchased product. So we kind of want to watch out for
13 offer structure and communication that looks like this.

14 Communication piece I'm generally referring to,
15 however, is the copy on the mail-in certificate, which is
16 where a great deal of the deception occurs, or perceived
17 deception occurs. I try to be balanced in this issue, so
18 I say "perceived" as well.

19 Here's another offer where I thought I could
20 get a Sonic Care probably for about \$15, because if I
21 submitted the middle panel I could get a \$10 rebate, and
22 if I submitted on the lefthand side I could get a \$5
23 coupon off, excuse me, \$10 coupon off -- I haven't
24 memorized the slides clearly -- but I thought I could get
25 this price way down; but it says in the fine print here

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1 that you can either have one or the other, either the
2 rebate or the coupon but not both. Now that's a little
3 problematic because this offer was delivered in a free-
4 standing insert would probably hit a circulation of 52
5 million pieces. So what I'm essentially doing is I'm
6 going to alienate about a half a million people who may
7 have been interested in this offer just by including some
8 small type thing here that says I can only have the
9 rebate or the coupon, but not both.

10 This next one, I don't remember the, I don't
11 remember the manufacturer here, but let me just indicate
12 one challenge here. Not only is this fairly busy both on
13 top as well as on that lower righthand panel, but here's
14 a problem for a manufacturer. This manufacturer is
15 simply asking for the consumer to fill in their name,
16 address, city, state, and zip code, and the UPC symbols
17 from the products they purchased, when in reality all
18 they have to do is go to the store, look for those
19 products, fill out the UPCs, and go get their \$35
20 virtually with no proof of purchase. So we try to act a
21 little bit balanced here to say it's not the fulfillment
22 provider, it's not the retailer, it's not the marketer.
23 Marketers have issues as well with the way they structure
24 their offers, sometimes to the point where that's going
25 to cost them a lot of money.

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1 This next one, and I love Pepsi, I've worked
2 for them for many, many years, but you don't need just a
3 magnifying glass to read this copy, you need a
4 microscope. And that's just plain unfair for guys of my
5 age, I mean I'll never get that \$10 rebate, I've got news
6 for you. And there are a lot of them out there like
7 that. And I think the next one is going to be even more
8 so. The one after this, maybe.

9 I think cross-ruffs can often be a challenge.
10 I think this was a very short timeline program. They had
11 to buy a DVD and 92 packages of Brachs products. This
12 isn't the worst example I've seen, but it's still a
13 little bit challenging for the consumer. The fact of the
14 matter is, excuse me, with most of these offers we're not
15 thinking about -- as marketers we're not thinking about
16 how the consumer is viewing what we're delivering to
17 them. We just create them, a product manager creates
18 them, he hands it off to an agency, the agency goes and
19 executes, and by then than brand manager's off on
20 something else again. So when his job is sort of in the
21 can, if you will, he's off onto some other thing. So
22 evaluating a promotion post-implementation or post-
23 execution is rarely done on the marketer side, and I
24 would encourage them to do so.

25 Here's another one. This is just a beauty. I

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1 can't read that no matter how high I blow it up. And I'm
2 thinking, what were they thinking? First of all, I don't
3 know the sponsor here, I don't who's paying for it, I
4 don't know what the prize is, I don't know what the
5 expiration date is, I don't know what I can get for it,
6 but I can say that this offer ran again in a free-
7 standing insert probably in a circulation of 52 million
8 pieces. It ran four weeks later, I can understand why,
9 they didn't get any entries the first time, so they had
10 to spend another quarter of a million dollars to
11 distribute 52 million more of them. And even if they did
12 there's no call to action here, there's no real
13 motivation for the consumer to send in, because if you're
14 only offering one prize and your circulation was 104
15 million, why would you bother? I hope whoever's it is is
16 not in the audience. I could get eggs thrown at me, I'm
17 telling you.

18 So what are consumers challenged by? Consumers
19 are challenged by unclear offer requirements, multiple
20 mail-in certificate versions for the same offer,
21 different terms and conditions for the same offer, and
22 that's fairly common. I know they're used a lot, but
23 attaches in bundles and cross-ruffs are just they're hell
24 on wheels for consumers, they just cannot comply with
25 them. So we either have to restructure them or figure

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1 out how to recommunicate them.

2 And we saw the printer offer, so I won't go
3 through that.

4 And the most challenging consumer offer these
5 days that I hear about is a rebate request invalidated
6 for a legitimately attempted purchase. They actually
7 went out and did this and for some stupid little minor
8 reason that really wouldn't affect the marketer's budget
9 they got disqualified.

10 We also hear, you know, if a manufacturer
11 offers a rebate, and I hear this from governmental
12 agencies and the press all the time, if a manufacturer
13 offers a rebate why do they make it so difficult to
14 comply with? So we're kind of shooting ourselves in the
15 foot when we make these offers but we don't do them in
16 such a way that's going to encourage compliance and high
17 customer satisfaction, and still be affordable and
18 efficient for the manufacturer. It absolutely has to
19 change.

20 Rejection letter copy; offer expiration dates
21 too short, not enough time, you see that, there's a lot
22 of legislation on that; unclear offer copy; and offer
23 limits enforced but not obviously communicated -- that's
24 the fine print on the bottom that says limit one per
25 household but nobody ever sees it so they submit in four

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1 times for it.

2 The marketer challenges I experience, and
3 things that my clients will come to me about will be, you
4 know, many rebates fail before they begin. They don't
5 have in-house expertise to design consumer-friendly
6 offers, or the created is relegated to an agency, or as
7 is most common, they operate in silos. You have
8 marketing, you have sales promotion, you have consumer
9 affairs, you have finance, and you have treasury, but
10 they never talk about what's going on. So the programs
11 really have to be evaluated both before they're delivered
12 and afterwards. And in many organizations it's so
13 political that the cross-referencing of those
14 communication pieces never takes place. And, again,
15 they're usually calling me when it's too late, after the
16 phones have been ringing off the hook or they're hearing
17 from some governmental agency.

18 Fulfillment providers are also a challenge. So
19 we can't throw all the mud at them. They rarely get to
20 review the offer copy in advance. Sometimes they don't
21 even know about an offer until they start receiving the
22 mail, and they go, what's this? And then they have to go
23 through their setup procedures. They usually aren't
24 considered at all during the development process, they're
25 sort of the last one on the end of the totem pole. And

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1 often reject thousands of consumer requests, perhaps as
2 the original specifications called for, but not
3 understanding that they're alienating half of the
4 marketer's constituency. The margins are thin so they
5 don't often have time to pick up the phone and call and
6 say, you know, we're getting too many complaints here.

7 And it's difficult for fulfillment providers to
8 understand how vocal consumers can be. So that needs to
9 change. I think they should at least be supplied with
10 the offer copy in advance of the offer so that they can
11 have a look at it, maybe give you guys some feedback
12 about what might work and what might not work. The
13 processing agreement must specify what threshold a
14 fulfillment house must notify a marketer, and that's as a
15 percent of invalids to valids, so that they're not
16 disqualifying the 50,000 out of a 100,000 that we talked
17 about before, Matt.

18 Marketers must be made aware the consumer
19 complaints might not only cause consumers to stop buying
20 their products, but it could also be unlawful behavior,
21 as is the case in Section 5.

22 I would also encourage marketers to use more
23 common sense. If it looks problematic, it probably is.

24 And the fulfillment industry must pay closer
25 attention to the problems inherent in the traditional

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1 mail-in process that caused all of this attention in the
2 first place. I mean it really is a joint effort between
3 marketers, advertising, fulfillment providers, to sort of
4 get together and say, geez, why would it take 18 weeks to
5 fulfill something? You know, is that intentional, is it
6 deceptive, are we telling the consumer? Is it full
7 disclosure? This is going to be an extraordinary issue
8 in the gift card space and the prepaid space, both
9 closed-loop and open-loop, when we get to the point where
10 we're talking about dormancy fees, we're talking about
11 maintenance fees, we're talking about split-tender where
12 they can't use the extra four bucks left on the card. I
13 mean this is extraordinary, I mean it's extraordinary.
14 Sure that's a valuable and efficient tool, but if you
15 don't disclose to the consumer what the condition is for
16 which they're getting this card, don't bother, stay away
17 from them.

18 Fulfillment also should be more innovative in
19 coming up with more consumer-friendly processes. That is
20 happening, for those of you who don't know, it is
21 literally possible to submit a rebate today, submit for a
22 rebate today, and get it back tomorrow. That technology
23 exists, and there are a few pioneers out there who are
24 doing it.

25 Marketers need to take a more proactive role in

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1 training their marketing and promotion personnel, and in
2 their sales promotion personnel. People don't do this on
3 purpose. We don't design offers that alienate the
4 consumers. I said once in Business Week that that would
5 be akin to brand suicide. We know that most of them are
6 not doing it on purpose. So let's change that, and train
7 the personnel who are handling these offers.

8 We also need to perform analyses that will lead
9 to measurable and actual improvements in their
10 promotions. So let's look at the data, analyze it, get
11 it objective in nature, and present it to whoever's
12 responsible for executing these offers. Usually senior
13 management has to get involved to break through some of
14 the political silos that exist in some marketers.

15 I contend that each successive offer has to
16 have a higher customer satisfaction rate than the
17 previous offer. And I think marketing departments need
18 to listen more closely to their internal and external
19 contact centers.

20 I'm doing what Tom did earlier, sorry, missing
21 my slides here. Okay.

22 When do marketers know they're in trouble? If
23 they hear from Matthew, that's a problem. If more than 3
24 percent of their consumers are on any given program are
25 invalidated. Tom cited 10, it really depends on both

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1 offer structure, size, how many proofs, and so on and so
2 forth. But a good benchmark, you want to look at about a
3 3 percent maximum. So if you're going over that -- I
4 evaluated about 25 for a pharmaceutical firm and 24 of
5 them were well beyond that, starting at 300 percent
6 greater than that and going up. So this happens all the
7 time, and it comes partly from the fact that a lot of the
8 sales promotion departments and marketers have
9 disappeared these days, so there's really kind of nobody
10 minding the store.

11 If you hear from a state senator or Better
12 Business Bureau, if more than 1 percent of your consumers
13 are contacting your contact center, internally or
14 externally, and oh by the way, those numbers are usually
15 not aggregated, so you have an internal call center, you
16 have a fulfillment call center, and you have an external
17 call center, each of them are getting 2 percent, 2
18 percent, nobody's saying that oh my God 7 percent of our
19 consumers are really angry with us and our offerings.
20 And those things have to be looked at.

21 If you haven't done training sessions for your
22 marketing and sales promotion and agency personnel, you
23 absolutely must begin to do so using real live data, and
24 kind of blurring those political lines internally, and
25 say, okay, this is for the good of the company. It

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1 doesn't matter who did it or whose fault it is, or why
2 this happened, we have to break through that clutter and
3 get it done and just plain educate.

4 And then if you don't have regular reviews with
5 your call center and fulfillment suppliers to find out
6 what's gone wrong, so that you can aggregate that data
7 and continue training and your continuous improvement.

8 And that's it.

9 [Applause.]

10 MS. O'BRIEN: Thanks, Hal. Next up is Dean
11 Graybill.

12 MR. GRAYBILL: Good morning. Use this one
13 here. I should start out with the standard disclaimer
14 that any statements I'm going to make are not necessarily
15 reflective of the Commission. I'm the only one required
16 to say that. But what I'd like to do is really
17 give you first a very general overview of what are the
18 laws that even apply here. You know, in some areas like
19 mail orders, we have a rule that's very specific about
20 things you got to do and the hoops you got to jump
21 through. Here that's not the case. So what you see is
22 us applying two very basic doctrines.

23 One is deceptive acts and practices. Frankly,
24 I view this as a common sense sort of thing. Now, it may
25 have very difficult applications, but the idea is are you

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1 making a representation, express or implied, that leaves
2 a net impression about the value of this rebate or the
3 ease of it, or the hoops you've got to jump through.

4 And then there's another lesser used doctrine
5 called unfair acts or practices, which is reserved more
6 for the situation where the harm isn't really stemming
7 from what people were told so much as the seller has done
8 something to structure the transaction that puts
9 consumers in a bind they can't get out of. A good
10 example of that is, you know, they tell you well you got
11 to send in the UPC code, but it turns out that a lot of
12 people don't get a box that has a UPC code on it. You
13 know, that's a structural problem with the offer.

14 Over the years we've brought a lot of cases
15 against a lot of types of firms. We don't discriminate,
16 we welcome all comers. Bumble Bee Tuna, actually that
17 was one of my favorites, where it was an offer you got 75
18 cents off on your next purchase. So you take the can
19 home and you got to peel the thing off, and then turn it
20 around to look what that offer is, the 75 cents off if
21 you buy 5 cans of tuna. So that was a very popular
22 promotion.

23 And it's funny, for whatever reasons you see a
24 lot of, a lot of things in the tech area. I don't know,
25 I'm sure there's reasons for that that are beyond me.

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1 But I use the words "taken by surprise" to really
2 describe this deception authority, as opposed to the
3 unfairness authority. And again, you know, we do run
4 across firms that it's just out and out fraud, you know,
5 outfits that from the get go are just offering a specious
6 thing.

7 That's not really what we're talking about
8 today. We're not necessarily talking about intentional,
9 venal actions, there can be just people not being
10 realistic about the offer they're making and making
11 exaggerated claims for what's going to happen. And then,
12 and this is the biggest problem, usually they fail to
13 communicate the very important types of conditions, such
14 as the ones that were just spoken of earlier, in a way
15 that, A, is understandable, that's noticeable, that will
16 really sort of -- oh, you know, the real moment where you
17 finally understand what the value and the onerousness of
18 this thing really is.

19 One case that was brought some years ago, I
20 think this was around 2000, was a Buy Dot Com, I'm sure
21 it doesn't do it justice, but this was a full page
22 newspaper ad appeared in USA Today, and so forth. The
23 basic idea was that you could get a computer for I think
24 it was \$269. And if you looked at this thing and you
25 were looking in the newspaper, you wouldn't really see

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1 any signal that there's any mention of important
2 conditions or considerations. But in 4 point type at the
3 very top there was a bunch of gobbledygook which, again,
4 you would need a microscope to discern. It goes gobble,
5 gobble, gobble, then it goes down and says, 'Requires
6 Compuserve activation.' Even then it's not telling you,
7 what, a month? A free activation? For a month? Or what
8 is it? That's the entirety of the disclosure in that ad.
9 So that was one problem.

10 In fact there were some very important
11 conditions having to do with this. One was that well you
12 had to spend the money, \$869 up front, and then send in
13 two different rebates to get your money back. That was
14 one thing. The more important thing was it required a
15 three-year subscription to Compuserve Internet Service at
16 the cost of \$21.95 a month. Now, or you could pay \$792
17 if you wanted to for that. And that wasn't all, you also
18 if you decided to cancel out of that Compuserve thing you
19 lost the rebate. And on top of that you had to pay
20 another \$50 cancellation fee. So again, it's not a
21 judgment about the wisdom of an offering like that, it's
22 the fact that nobody understood this. Nobody really was
23 made to understand that at the point of sale.

24 Now, I want to say one thing just in the
25 middle, and that is, you know, FTC has had a pretty

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1 vigorous enforcement program, but none of it indicates
2 any institutional opposition to the idea of rebates.
3 Frankly, we're just neutral. We're just neutral about
4 that like we are about everything in life. You know,
5 it's if people -- well, maybe that's not true.

6 [Laughter.]

7 MR. GRAYBILL: But, you know, if people
8 understand what is being offered they can reject it or
9 they can accept it. There may be some rebates that just
10 look silly to us, but although I'll have to say if
11 they're counter-intuitive that does have to bear on how
12 they should be dealt with, because the more counter-
13 intuitive an offer is, you better, you better
14 conspicuously disclose that.

15 And there's one prime bizarre example of that
16 in our own office where Matt Gold, who was one of your
17 people that introduced today, accepted an offer in 1993,
18 he went out and bought a mattress for \$700 and he liked
19 the price that it was, but he also saw there was a rebate
20 offer, you can get 50 percent off. He filled out some
21 paperwork, you get your 50 percent off if you send it in
22 10 years from now. And I'm sure the company's on the
23 golf course saying, you know, what a sweet promotion that
24 was. But suffice it to say they didn't know who they
25 were dealing with. And the years passed, children were

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1 born, and in May 2003 Matt's looking at his calendar,
2 whoa I got to go to the doctor this morning, bing, time
3 to get my rebate check, and he did. But the thing is
4 they actually gave it to him. And, you know, it's like I
5 either get a rebate check or I get a case, you know. But
6 what's not to like. But that's just an example of, you
7 know, it's bizarre, but frankly they conspicuously
8 disclosed it. He understood what he was getting, he's
9 one out of a million people who took it, and they
10 followed through. So that would not be the profile of a
11 case we would bring.

12 The InPhonic case we've already gone over to
13 some degree, and I'm going to leave some time here so I'm
14 not going to belabor it. Other than again as Eileen said
15 this morning, one of the big issues in this was having to
16 do with the use of hyperlinks, and actually the Buy Dot
17 Com thing was InPhonic should have known from the Buy Dot
18 Com case that we have concerns with this, because the Buy
19 Dot Com case that's an internet seller, so that's a
20 legitimate question, is well maybe they tell them all
21 about it on the internet. Well, no, they didn't, because
22 you went there, the first page, you know, it didn't tell
23 you anything, there's a hyperlink. You go to the second
24 page, it came out in drips and drops, it's like I'll tell
25 you about this, I won't tell you about that. It wasn't

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1 until you got to about the fourth disclosure page, the
2 fourth hyperlink, which, by the way, was a page that you
3 didn't have to go through before ordering, that you
4 finally got all the stuff.

5 So that already gave notice about the use of
6 hyperlinks as a -- and also the hyperlinks itself, and
7 here's the important point, there wasn't those warnings
8 and red flags around the hyperlink indicating read this,
9 this is important. And actually if you looked at the
10 order in Buy Dot Com, it didn't condemn the use of
11 hyperlinks but it said you better say something like,
12 'Owner's cancellation requirement, read here.' It wasn't
13 quite that draconian, but I mean it was something like
14 that, because people, you know, you don't always hit
15 hyperlinks, you don't always know how important it is.
16 You sort of assume they're going to tell me at some point
17 how important these caveats are.

18 Another reason InPhonic should have, and I'm
19 not trying to paint a picture of evil here, I'm just
20 saying this was not really cutting edge law in a way when
21 we came out with InPhonic, because we also in May of 2000
22 had come out with this thing, and again it's in the
23 business card thing you have where Eileen already quoted
24 from it. But there's actually two or three pages on
25 hyperlinks alone. And the sort of thing you should think

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1 about before using that as your exclusive route to tell
2 the truth. And you can also go to FTC.gov, which by the
3 way is a wealth of information on these subjects and you
4 print off a copy of this tonight if you want to.

5 Here I'll just quickly say, what did the
6 hyperlinks say? Well, it's like Eileen said, it just
7 basically said there's a rebate. I mean these two things
8 where it said \$90 customer mail-in rebate. If you
9 noticed there was a hyperlink you could get more
10 information, but it certainly didn't send up any red
11 flags that you better take a look at this in detail,
12 otherwise.

13 There were some other aspects to the InPhonic
14 case which also appear in other cases. And that is there
15 was also a matter of, I think I'll just flip through this
16 stuff, again, there was this aspect, as was mentioned
17 before, about InPhonic, where there's just this weird 180
18 day to 210 day window of time, no earlier, no later. You
19 had to have proof of continuous wireless service, you got
20 disqualified if you changed your phone number. And then
21 there was also a twist in that case where they actually
22 told people, hey you know what, if you don't quite get
23 this right the first time we're going to help you out.
24 They didn't, not many times, at least. So let's say you
25 happened to forget to put your email address on the

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1 thing, it would reject it. They had big red stamps going
2 reject. And telephone number, they would crater that
3 one, too, right there. Ineligible or incomplete forms,
4 did that.

5 Here was an example of that thing I was talking
6 about before, which is an unfairness, which is there was
7 also a problem of they had some things were somewhat
8 standard, you know, the UPC code and this, this, and
9 this. Also you were supposed to send in a guide to
10 wireless service. And, you know, not all customers would
11 get that stuff. So and then they would just
12 automatically, you know, reject it. And they are 50
13 percent. Now you've been hearing these figures about
14 well what's the trigger point where you should start
15 worrying, or at 10 percent has something gone wrong: 50
16 percent of InPhonic customers that had sent in a rebate
17 got rejected. When you got something like that something
18 ain't right.

19 Last subject, and I'll quick speed through
20 this, is just the idea of late fulfillment not going
21 well. And InPhonic had, you know, sometimes -- you've
22 heard much more wisdom on that than I can give you --
23 small companies can get in over their head, large
24 companies don't make it a priority, whatever. The Soyo
25 case was mentioned, where 95 percent of Soyo's rebates

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1 were late.

2 There was another case that was done by our San
3 Francisco office which I thought was, I didn't have
4 anything to do with, but it was I thought a great case,
5 or interesting case, in that it was Comp USA. And Comp
6 USA is a retailer, and they were advertising a
7 manufacturer-funded rebate. And they made a promise,
8 rebate checks will be mailed in six to eight weeks. And
9 what happened there is that to put it simply a great many
10 rebate checks were received as much as six months or more
11 past that deadline, and some just weren't gotten at all.
12 And frankly I think it was a case where the people
13 handling the rebates, the QPS, which was the
14 manufacturer, you know, they were in trouble, and they
15 were having trouble with all sorts of things in the
16 company, and they were going to go bankrupt ultimately.

17 But you can ask yourself, well wait a minute,
18 Comp USA is a retailer. Was it fair to hold them
19 responsible for the problems of the manufacturer? Let me
20 just say that in this case as in all cases, you know, we
21 really are reasonable people, we hear the best arguments
22 all sides can give, and frankly in this case the
23 Commission went out of its way in the complaint to signal
24 the reasons. And one, I forget the verbiage, what it
25 was. Comp USA had knowledge and continued to advertize

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1 the same promotion up until just before QPS went
2 bankrupt.

3 I would simply, I think that's pretty much it
4 for me. I would say that if you want more knowledge
5 about the cases we do, the FTC.gov website is a great
6 wealth. One little research tool I used is that in every
7 one of these cases, and I haven't mentioned two-thirds of
8 them, are accompanied by press release, and very often
9 electronically online on FTC.gov the press release of the
10 company as well by electronic copy of the actual
11 complaint and the order. Maybe not in some of the older
12 cases, but almost in the last five years I think all of
13 them. So you can go to FTC.gov, look for 'newsroom,'
14 which is where you get the press stuff, and it's
15 searchable by term, you can put in 'rebate,' or if you
16 know you want to see Comp USA type in 'Comp USA,' it will
17 bring up the press release, it will give you a chance to
18 actually print out as well the pleadings and it's
19 something where you can sort of fill in the details as to
20 how we view these things.

21 Thank you.

22 [Applause.]

23 MS. O'BRIEN: If you, can you hear me? We have
24 a couple of questions from the audience.

25 Start off with Joe, if you're ready. Do you

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1 have an interest in helping consumers, so if you hear
2 from consumers about maybe interest in your organization
3 actually help them individually?

4 MR. RIDOUT: At times we'll contact a retailer
5 or fulfillment house to try to mediate when the problems
6 have arisen. We can't do as much as the Federal Trade
7 Commission or say the state Attorney General can do,
8 because we don't have any jurisdiction like that. But we
9 can try to mediate in a reasonable way so that it
10 wouldn't get to the sort of the complaint where it would
11 have to be brought to the attention of those
12 organizations. But we do try to help, yeah.

13 MS. O'BRIEN: Great. And just so you know the
14 FTC we welcome complaints from consumers, that's how we
15 know the cases to bring.

16 I'm not sure who exactly this is directed to,
17 but I'll just ask the question so anyone can answer.
18 Copies of receipts present problems of consumer fraud, do
19 you think consumers should shoulder some of
20 responsibility?

21 MR. RIDOUT: Well, I don't think anyone would
22 disagree with that. That sounds like -- consumers
23 certainly have to shoulder some of the responsibility.
24 But there certainly are methods by which you could
25 securely determine if a copy of a receipt represented

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1 fraud, just an honest attempt to safeguard one's material
2 in the event of a rebate form getting lost. There's
3 certainly easier ways to do it, but consumers have to
4 bear responsibility, but making a copy of a receipt I
5 don't think presents an inordinate opportunity for fraud
6 with the other safeguards in place.

7 MS. O'BRIEN: What is the NTIA?

8 MR. STINCHFIELD: The National
9 Telecommunications and Information Administration
10 division of the Department of Commerce.

11 MS. O'BRIEN: And I think this is probably
12 directed at Hal. Have you seen that practices have
13 changed on a national level because of the recent
14 Connecticut law and Rhode Island law regarding rebates?

15 MR. STINCHFIELD: I think that because of all
16 media attention, marketers are getting smarter about
17 this, but it's kind of slow to come. The fulfillment
18 industry is also getting a little bit smarter with
19 electronic transmission of proofs of purchase and the
20 submission of electronic rewards back to the consumer by
21 ACH and other mechanisms that speed up the turn time.

22 I think with Senator Schumer, attention by the
23 Federal Trade Commission, Better Business Bureaus, other
24 Attorneys General, that in general the industry's getting
25 smarter, it just has to accelerate that speed of

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1 learning.

2 MS. O'BRIEN: I know the answer to this
3 question, this is one of my own, but I'll ask Dean
4 anyway. Maybe you could tell folks what actions when the
5 FTC actually takes an action, I mean what sort of
6 remedies can we get?

7 MR. GRAYBILL: Death by hanging.

8 [Laughter.]

9 MR. GRAYBILL: But actually one example, in
10 Comp USA, for example, there's almost always a conduct
11 prohibitions, don't lie again, disclose XYZ. In Comp
12 USA, for example, there was -- and this is a common
13 provision, conduct order said have a reasonable basis at
14 the time you're making the claim for the idea that you
15 can deliver on it. Now you say, what's reasonable basis?
16 It's a floating concept that has to be judged case by
17 case. But that's one thing. The second is just say
18 don't be late anymore. In Comp USA there was also a
19 redress thing, I think it was \$15 to \$100, they had to
20 offer redress. I'm not sure how much money that ended up
21 actually being, but that's a very common result.

22 MS. O'BRIEN: Thank you. Here's another
23 question toward you, Dean. I don't know if you have a
24 comment based on this. But wouldn't it be useful to add
25 to the FTC's disclosure guidance a point that unfamiliar,

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1 unusual, onerous, unexpected terms require more prominent
2 disclosure?

3 MR. GRAYBILL: I would have thought it already
4 is covered. But I mean certainly the concept. Again, we
5 don't, I think as I said earlier, we don't make
6 judgments, we don't regulate the content of offerings,
7 that's too gimmicky, maybe we should but we don't. And
8 that's not our job. But it is a truth, and there's truth
9 in all types of advertising, you know, if you're leaving
10 a net impression about the value of something and there's
11 a totally counter-intuitive aspect to it, I've always
12 viewed it as sort of a sliding scale, you know, the more
13 counter-intuitive, the more onerous, the more unexpected,
14 the more it affects the value of the offering, you better
15 be -- you better err on the high scale of clearness and
16 conspicuousness.

17 I think if you read the deception statement
18 which we have as overarching thing on deception, I think
19 it talks about it in general terms.

20 MR. STINCHFIELD: I would go one step further
21 on that and suggest that the development of offer copy
22 and the communication of offer copy is not an art, it is
23 an absolute science. You can measure the invalid rates
24 and the consumer's understanding of an offer simply by
25 measuring those invalid rates and redesigning the offer

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1 copy in order to drive them down.

2 MS. O'BRIEN: I'm not sure exactly what this
3 question is but I'll read it, because I've been having a
4 hard time understanding it. What is legally
5 objectionable about requiring that consumers comply with
6 all disclosed terms of a rebate offer? Mr. Ridout paints
7 a view of rebates that suggests that no reasonable person
8 would attempt to participate in a rebate offer, then once
9 consumers, I'm not sure, who to get to determine which
10 requirements they comply with. Does that make sense?

11 MR. RIDOUT: Not exactly. I didn't mean to
12 leave the impression that we felt that consumers should
13 not comply with rebates, or that a reasonable consumer
14 would steer clear of them. Merely we were highlighting
15 some of the problematic areas that have befallen consumers
16 who have complied with what they thought were the
17 reasonable terms presented, that turned out to not be
18 reasonable or turned out to be not complied with by
19 either the rebate fulfillment house or someone else down
20 the line.

21 But rebates in and of themselves we don't have
22 any objection to, per se, merely the way that some of
23 them have been unfairly presented and unfairly processed
24 at times.

25 MS. O'BRIEN: And as Dean was saying earlier, I

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1 mean we're not really -- the FTC hasn't made a value
2 judgment on the term so far, it's whether consumers are
3 actually understanding them when they buy the product.

4 MR. RIDOUT: If you look at some of the reforms
5 that some companies like Staples looked at the consumer
6 complaints associated with rebates being their number one
7 complaint they received from their clientele, then they
8 reformed their rebate procedures a great deal. And
9 that's really exemplary, as far as we're concerned, and,
10 you know, they've reduced the complaints they've received
11 enormously.

12 So rebates can work very well. But it's
13 interesting to look at those that don't and figure out
14 why.

15 MS. O'BRIEN: I don't know if any of you know
16 the answer to this question, but can a rebate, a company
17 that's offering a rebate actually refuse to mail to a PO
18 Box?

19 MR. STINCHFIELD: You know, that's a good
20 question. I think if it's clearly stated on the order
21 form they're within their rights to say so, but I would
22 pretty much caution against it, and work rather than on
23 an elimination routine that precludes or prevents or
24 makes it more difficult for a consumer to write different
25 PO Boxes down in order to defraud the company and get

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1 multiple requests. They have to be careful there.

2 On the NTIA initiative it so stated in the rule
3 making that PO Boxes are generally not allowed, that they
4 generally would not constitute a U.S. household.
5 However, there were exceptions, like territories in
6 Alaska and Indian Reservations and the like. I don't
7 think we have to go that far. A fulfillment provider
8 could suggest send back a letter asking for either a
9 rural route or a street address. I mean that's one
10 possible out.

11 MS. O'BRIEN: All right, thank you. I think
12 that's the end of our time for this panel.

13 [Applause.]

14 MS. O'BRIEN: We're going to take another short
15 break and reconvene at 11:45. And I encourage you again
16 to fill out your survey forms.

17 (BREAK)

18

19

20

21 **PANEL 3: THE FUTURE OF REBATES**

22 MR. GOLD: Our last panel of the morning is
23 called The Future of Rebates. We're going to be looking
24 at this topic from two different angles. First, we're
25 going to hear from Matthew Edwards, who is an assistant

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1 professor in the Department of Law in the Zicklin School
2 of Business at Baruch College in New York City.

3 Professor Edwards has written an article called, 'The
4 Law, Marketing, and Behavioral Economics of Consumer
5 Rebates' that will soon be published in the Stanford
6 Journal of Law, Business and Finance. And I would
7 certainly commend it to you once it's published.

8 One of the topics that he addresses in his
9 article is the recent state laws and the increasing
10 activity among state legislators in enacting and
11 proposing laws in the area of rebates. As we heard in
12 the last panel, there is no federal law that specifically
13 governs rebates. Some states, though, have legislated in
14 this area, and there's been quite a bit of legislative
15 activity on the state level just in the last year or two.
16 And Matt Edwards' presentation is going to focus on state
17 laws, both existing and pending, in the area of rebates.

18 Our second presentation is going to be by Chris
19 Quinlan, who is co-founder of PlusNet Marketing, which is
20 a promotion marketing company in Wilmington, Delaware.
21 PlusNet has developed an online rebate redemption model
22 that he'll describe, which is very easy to use and
23 attractive in a lot of ways from the consumer
24 perspective. Chris is going to be describing in his
25 presentation how his company's web-based rebate

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1 redemption model alleviates a lot of the issues about
2 which consumers have complained over the years regarding
3 rebates.

4 Now, that's not to say that the online
5 redemption model answers all of the problems from the
6 consumer's standpoint. And Eileen Harrington, who is our
7 Deputy Director in the Bureau of Consumer Protection of
8 the FTC in Washington, D.C. is going to be addressing
9 some of those issues, and reacting to the issues that she
10 hears in the first two panels.

11 One interesting facet of PlusNet Marketing's
12 online redemption model is providing consumers with a
13 variety of payment possibilities, alternative methods of
14 payment for their rebate. And these raise certain
15 disclosure issues, and Eileen, among other things, will
16 be discussing some of those disclosure issues raised by
17 those payment methods, such as gift cards.

18 So let's start out with Matt Edwards.

19 [Applause.]

20 MR. EDWARDS: It's an absolute delight to be
21 with you here today to talk about rebates. This is an
22 informal presentation on a paper that I'm working on. I
23 have a longer paper that is coming out very soon in the
24 Stanford Journal of Law, Business and Finance, as Matt
25 Gold pointed out. And you can tell I'm from academia,

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1 because if you want a copy of that paper once it's
2 published I'd love to send it to you, just give me a copy
3 of your email address and your address, and I'll send it
4 to you for free. It's just you tell me who you are and I
5 mail it to you for free, which is a little bit different
6 from some of you are used to dealing with.

7 When I was writing my first paper I found out
8 about a large consulting firm that had done a study on
9 rebates, and I thought it might be interesting to get
10 their information, so I contacted them and said, you
11 know, I'm writing this little academic paper, it would be
12 nice to just see your report, and they told me it's
13 \$15,000.

14 [Laughter.]

15 MR. EDWARDS: And I explained that I work for
16 the City University of New York, and I teach
17 underprivileged kids, and that sort of thing, and they
18 explained to me it's \$15,000. So we do things a little
19 bit differently. You give me your address and I actually
20 just send you stuff for free. Oh yes, and this is
21 informal, don't cite, quote or distribute, it's not ready
22 at that stage. In fact, after I finish I'm going to have
23 to ask you to forget that you've ever seen me.

24 [Laughter.]

25 MR. EDWARDS: Okay. We've heard about all the

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1 problems of rebates. Usually articles about rebates in
2 periodicals are singularly unhelpful. They say rebates
3 are a scam, rebates are a rip-off, they don't focus in on
4 exactly quite often exactly why rebates are a scam or a
5 rip-off. And most of my work goes trying to figure out
6 the regulatory fit between very specific rebate problems
7 and proposed solutions, and trying to guarantee that the
8 problems that we are seeing with rebates are actually
9 solved by the proposed solutions.

10 There's a lot going on in the area of
11 regulation of rebates. New York recently passed a
12 statute that, a significant statute that's the first of
13 its kind probably in the country to so comprehensively
14 regulate consumer rebates. The California legislature
15 twice in recent years passed very significant rebate
16 reforms, both times those bills were vetoed by Governor
17 Schwarzenegger. Most recently in September 2006 a
18 rebate law was passed in Texas, a fairly comprehensive
19 statute that was also vetoed by the governor. And as has
20 already been mentioned before, Senator Schumer in one of
21 his Sunday afternoon press conferences called on the FTC
22 to regulate rebates in January 2006.

23 So there's a lot of activity out there
24 reflecting some of the problems that we've seen, some of
25 the consumer angst over rebates, some of the problems

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1 that have been discussed already. There's a lot of
2 agitation out there in the states in terms of doing
3 something about the rebate problem, so the issue, of
4 course, is what exactly is a problem and what should be
5 done.

6 There's several major types of rebate
7 regulations, and I'm not talking -- every state has an
8 unfair and deceptive trade practice law, a very broadly
9 worded law that could apply to rebates, just like the FTC
10 has its Section 5 authority. I'm not talking about those
11 broad laws that say you can't do anything that's unfair
12 or deceptive, we're talking about laws that are much more
13 specifically focused just at rebates, just at consumer
14 rebates.

15 There's some laws that govern consumer price
16 advertising. We're going to go over each one of these
17 categories quickly. There's some new rules about
18 mandatory rebate form availability; mandatory redemption
19 periods that's saying how much time you have -- the
20 consumer has to redeem the rebates; mandatory rebate
21 award payment periods, how much time the rebate offeror
22 has to pay the rebate; and then some rules about
23 mandating the duplicate rebate receipts. So these are
24 all state laws that are focused right at various
25 practices within the rebate industry that are considered

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1 to be the most egregious, the most egregious problems.

2 Rebate price advertising, New York, California,
3 Oklahoma, all require that if you advertise a rebate you
4 make it very clear that the rebate redemption is required
5 in order to obtain the advertised price. So this is a
6 price advertising statute that these three states have,
7 that basically says you have to clearly say this is
8 price, this is the rebate, so it's a price after rebate.
9 New Jersey assembly just passed a bill in January, 71 to
10 8, and it's pending now before the New Jersey senate.

11 A lot of this stuff is in flux, so it's
12 important in whatever state you're operating in, or if
13 you're operating nationally that you consult an attorney,
14 and not me, to make sure what you're doing is legal.

15 I'm not going to go through the California,
16 read the California code to you, but it's basically just
17 says that you have to be very clear, that you have to
18 clearly and conspicuously make it known that to obtain
19 the price advertised you have to mail in a rebate. So
20 that's the California law, and there's other states with
21 such laws.

22 Connecticut by regulation, and Rhode Island,
23 have even tougher rebate advertising laws. And
24 effectively -- and I want to thank Matt Gold for pointing
25 this out to me because I sort of misstated my initial

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1 draft in my paper, Connecticut and Rhode Island actually
2 make it an unfair or deceptive act just to advertise the
3 price with price after rebate. So effectively rebate
4 price advertising, price rebate final price, is unlawful
5 in Connecticut and Rhode Island. That is a very, very
6 strong approach, and it's an unusual approach in the law.
7 So you can't advertise in Connecticut, you know, rebate
8 price after rebate.

9 There was a proposal in Maryland just like
10 that, that was stalled, and there's some proposals right
11 now pending in Massachusetts for the same thing, where
12 you can't advertise the price after rebate. And the idea
13 is that it is inherently misleading to consumers because
14 they can't understand the whole thing of a price and then
15 a rebate, and then a price after rebate, this is
16 something that they somehow they grapple with and can't
17 really comprehend.

18 I'm going to quickly go through this. There's
19 some laws that have long been on the books. One in
20 California, it's called the subsequent event law, there's
21 a law that says that you can't offer -- you can't tell
22 somebody they'll receive a rebate if receiving a rebate
23 is contingent on a later event, meaning something else
24 has to happen to get the rebate. But the California
25 courts have held that this does not apply to traditional

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1 mail-in rebates, even though by the text of the law it
2 would seem that the fact there's a subsequent contingent
3 event, mailing in the rebate, that it would apply to
4 rebates. So just in the interest of comprehensiveness I
5 put this in, but it doesn't really apply to rebates.

6 Maine and New York now have laws that ensure
7 that rebate forms will be provided to consumers in an
8 timely manner. So these are things about consumers
9 showing up and saying I want to do the rebate but I show
10 up at the store and there's no forms, and it's difficult
11 to obtain forms. California had such a
12 provision in its vetoed bill. There's been proposals of
13 this kind in Arizona, Massachusetts and Texas. So these
14 are the types of things where people saying I want to
15 redeem but I can't get forms. So these are rules saying
16 that if you're going to say you're offering a rebate you
17 have to make sure that you have the forms available. A
18 pretty reasonable requirement.

19 New York's approach, which I won't go into
20 detail, obviously it's a lot of text on that slide, it
21 basically says that you have to have the forms there
22 where somebody makes the purchase, or you have to have
23 some sort of method for them to generate the form. And a
24 rebate offeror can comply with the statute simply by
25 providing sufficient forms based on reasonably

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1 anticipated sales. So you don't violate the law if in
2 New York if you provide sufficient rebate forms based on
3 what you anticipate, and it turns out that you run out,
4 that's okay, that's a safe harbor in the law. But if you
5 anticipate having 20,000 come in, 100,000 people come in,
6 and you put out 5 forms, that would be violating the law.
7 And there's provisions in the law for internet and
8 telephone sales. And these violations can give rise to
9 damages of \$100 to \$1,000 per violation, under the GBL.

10 There's been almost no litigation or no cases
11 under these provisions yet. They're very, very new.
12 And, in fact, for those of you who are really interested
13 there's another New York general business law, 391, with
14 exactly the same number that has to do with the sale of
15 used clothing. And somehow the New York legislature when
16 they passed this new statute didn't realize they were
17 giving two different laws the same number. Just
18 something for any lawyers in the room, something of
19 interest.

20 Rebate redemption time periods. New York now
21 requires that you give people at least 14 days to redeem
22 their rebates. California would have given consumers 30
23 days. Schumer, Senator Schumer recommended 30 days. And
24 there's a proposal pending right now in Massachusetts
25 that would give consumers a full year, and hearings are

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1 being held this month that would require a year. And
2 this is very interesting, it builds on Professor Silk's
3 fascinating presentation earlier which the general
4 feeling in legislatures is let's legislate longer
5 periods, but the behavioral economics evidence and the
6 marketing research indicates that longer deadlines might
7 not necessarily be beneficial. And I rely on Professor
8 Silk's research in this area in my paper, that longer
9 deadlines might not be beneficial. But that's what
10 consumers think they want, so that's what the legislators
11 are pushing for are long, long deadlines, even though
12 that might actually decrease redemption and increase
13 breakage.

14 There's also rebate payment periods. New
15 York's new law requires payment within 60 days. After
16 somebody satisfies the rebate requirements California
17 would have required 30 days. A proposal is now pending
18 in Florida, for those of you who want to lobby the
19 Florida senate, that would require payment in 15 working
20 days. And then there were a couple of other proposals.

21 So these are things saying you have to pay
22 people quickly, which, of course, the problem, as you
23 know better than I do, these short payment periods may
24 create complications between rebate offerors and
25 fulfillment centers, and it may not be possible to pay

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1 people that quickly. But legislators are getting into
2 the act, they want to mandate rapid payment of rebate
3 rewards.

4 Rhode Island requires rebate offerors to accept
5 copies of receipts now. So in Rhode Island you have to
6 take a copy of a receipt. New York, there's a proposal
7 pending that would require the provision of duplicate
8 receipts, and of course many firms are already doing that
9 on their own. There's many rebate offerors that provide
10 duplicate receipt for rebate redemption, Best Buy,
11 Circuit City, there's other firms that do this. And
12 California also had a similar thing saying that you
13 either have to accept duplicate receipts or accept
14 copies, you have to provide receipts or accept copies.
15 So this is the whole problem of people saying well I have
16 the receipt but I need to hang on to the receipt in case
17 I return the goods, or I need multiple receipts because
18 there's multiple rebate offers, and that's a frustration
19 some consumers have claimed, saying there's multiple
20 rebate offers but they need original receipts for each
21 one of the rebate offers. And so this would ameliorate
22 that complaint to some extent.

23 Now, a ban altogether. In my paper, which I
24 wrote a long time ago, I said this is not even an issue,
25 so therefore it's not even really worth discussing,

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1 nobody's interested in banning rebates. But there are
2 proposals pending now in New York and Massachusetts that
3 would require payment of rebates at the point of sale.
4 That is effectively a ban on rebates, if you require
5 payment at the point of sale. In the past in New York
6 this has not been successful. In New Hampshire it has
7 not been successful. I have no indication of whether it
8 will or will not be successful in Massachusetts, I doubt
9 it. But this is the type, that's probably the most
10 radical remedy, it would effectively be a ban on rebates
11 if they require payment at the point of sale.

12 But there are things pending now in New York
13 and Massachusetts requiring instant payment. And in many
14 of these proposals legislators simply cite the newspaper
15 articles that we've all read, and they cite those
16 newspaper articles as evidence, and those newspaper
17 articles as many in the room know are quite insipid and
18 quite lacking in any sort of sustained reasoned
19 discussion of the advantages and disadvantages of
20 consumer rebates.

21 There's other miscellaneous proposals that have
22 floated around in different states. Some proposals have
23 said you have to give people a way of checking on the
24 status of their rebates, some sort of mandatory method
25 for checking on the status of the rebate. The second one

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1 is some sort of clear marketing of rebate reward checks.
2 This is part of the whole junk mail thing that the checks
3 look like junk mail. I'm very, very sympathetic to the
4 complaints that consumers have about all of these things.
5 Some of the complaints seem to be a little odd to me, the
6 whole check is junk mail kind of you have the picture of
7 the consumer getting something in the mail and oh what's
8 this, you know, I think people can recognize a check in
9 the mail. But some people say it looks like junk mail,
10 so maybe there should be clearer markings on rebate
11 reward checks.

12 And then the last thing is something that
13 touches on what we talked about earlier, is requiring --
14 forbidding rebate offerors from requiring too much
15 personal information. They say, you know, they ask for
16 everything on these forms. I've filled out a lot of
17 rebates. I have not seen that they require an excessive
18 amount of personal information, but some states have said
19 that they want to limit the amount of information that
20 could be required.

21 So then the question becomes for people at the
22 FTC and at the state level, the bigger question stepping
23 back is is this a good thing where we have 50 different
24 states where different legal approaches might be tried on
25 regulating rebates. On the one hand it gives you a good

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1 chance to experiment with different approaches, which is
2 always a good thing in legal regulation. On the other
3 hand it could complicate things for national retailers
4 and rebate providers to have 50 different state laws to
5 follow. So the question is would a single federal
6 approach be better, some sort of best practices, would
7 that be better, a state model law. What would be the
8 best way for the whole industry? On the one hand you
9 wouldn't like a strict law, but maybe a strict law that's
10 the same everywhere would be easy to work with rather
11 than a mishmash of strict laws and relatively lenient
12 laws.

13 And building on Professor Silk's point, the
14 question about creating what legislators think are
15 consumer-friendly rules that actually have an adverse
16 impact on consumers, you know, requiring so much,
17 requiring levels of disclosure that might have an adverse
18 impact, requiring deadlines that would end up making
19 rebate offers not feasible. So the question is are we
20 really helping consumers with some of this legal
21 regulation, and what is the optimal level of regulation
22 to ferret out the most egregious rebate conduct without
23 deterring honest retailers and rebate offerors from
24 providing something to consumers.

25 And then the last thing is more of an FTC

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1 thing, and also with the states, what is the better way
2 to deal with this sort of thing, is it through litigation
3 under unfair and deceptive trade statutes, simply picking
4 out the worst players and having law suits against them.
5 Or would it be better to legislate across the board or
6 have a regulation across the board. And those are always
7 difficult questions to answer, whether it's better to
8 regulate via litigation or some sort of legislation
9 across the board.

10 As I said, I'd love to have further contact
11 with all of you. And if you want to get a copy of my
12 first paper just stop by, I'll give you my card. And I'm
13 going to write a follow-up piece, I'd love to send that
14 to you and get input as well, because it's very difficult
15 sometimes in the little office with no window to get an
16 idea of what's going on in the real world. So I just
17 sort of make stuff up.

18 [Laughter.]

19 MR. EDWARDS: And it's slightly better to
20 actually talk to people that work in the business than to
21 invent things, even though it might be less amusing
22 personally.

23 Thank you.

24 [Applause.]

25 MR. GOLD: Next up we're going to have Chris

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1 Quinlan.

2 MR. QUINLAN: After Matt's presentation I'm
3 kind of hoping I have a job next year with everything
4 that's going on.

5 I'm going to talk to you a little bit about the
6 process that we go through at PlusNet. First I'm going
7 to give you a little background on the company, and then
8 actually run you through a demonstration.

9 Basically what we've tried to do is transform
10 the rebate industry from our side and the consumer
11 behavior side, from a breakage model to a redemption
12 model. And breakage for us is the uncashed funds, or
13 unused funds on cards.

14 A little bit about the company, we were the
15 first to launch in '99 an online rebate process at Rite
16 Aid Corporation, we were the first to offer a completely
17 online solution to redeem end value and actually validate
18 and fulfill the rebates electronically. And our
19 technology is free to the consumer.

20 This sort of, you know, the old way versus the
21 new way, if you will. In fact, I have a couple things
22 here. Traditionally you have to cut out UPCs, mail in
23 all kinds of information. We've kind of taken that down
24 to one process where you can actually use this receipt to
25 actually go online. You can mail in the receipt at the

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1 bottom by filling out the information and drop it in the
2 mail, or you can go online and we're going to go through
3 a demonstration of that in a second.

4 This is just a little bit about what the
5 consumers are saying. These are actual consumers that
6 use the process, I do more shopping at Comp USA due to
7 the rebate. This is by far the easiest process I've ever
8 went through for a rebate. E-rebates are the best thing
9 to happen. No postage. And then there's some longer
10 ones that will actually be in part of the presentation.
11 You get love the rebate system.

12 This is a key component to what we do, in terms
13 of a constant communication with the consumer. We
14 basically touch the consumer over four times with emails
15 to tell them the status of actually if their rebate is
16 approved, how they're going to get paid, rebate status
17 check so it's an actual brand enhancement for the actual
18 retailers as well as the vendors.

19 Some of the numbers, and I'm going to give you
20 an update as of I think it's through April 15th, we're
21 approaching 75 percent of our rebates are done online.
22 Our average check turn time is down to 11 days. With
23 some retailers there's actually a hold period for
24 returns, so the 11 days is actually on top of that hold
25 period. And we don't have 1 percent of contact, Hal,

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1 yet, but we're working on it.

2 This is what I'm going to walk you through, in
3 terms of what the customer sees. One key point is that
4 actually we can actually project redemption rates as well
5 as sales rates, because of the historical POS data that
6 we get from the retailers. And it can be done by
7 category and/or brand.

8 So in this case the consumer makes a purchase
9 at Comp USA, either online or in the store, they're told
10 with the receipt they can file the rebate either
11 electronically, or as I said earlier, they enter their
12 information, they drop it in them mail. So at this point
13 they're directed back to the Comp USA site. They either
14 have an account where they log in or they can create an
15 account. And on the other side, the lefthand side, is
16 sort of all the FAQs, and then they can actually search
17 the rebate categories as well. So if you have a user
18 name and password you use it, if you're not a member you
19 click there, we take demographic information from the
20 consumer. All the demographic information's collected is
21 used for customer service purposes, we don't sell or rent
22 the lists.

23 And then, sorry, in some cases, and this will
24 come up later, but we ask some relevant questions to the
25 consumer that are optional. Just as you'll see this

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1 feeds into the back end processing part. So in this case
2 it's are you a satellite radio subscriber.

3 Once a consumer is signed in they can actually
4 submit a new rebate claim, they can check the status of
5 their current rebate claims any that are outstanding, and
6 they can actually find offers. They can also actually
7 look up the history of what they have. So in some cases
8 there's taxable events or potentially issues where you
9 have to keep copies of your receipts, you don't have to
10 do that in this system, it's all held for you.

11 At this point they have an E-Rebates account
12 number. We verify their consumer information.
13 Obviously, if there's something to update we can update
14 it. And then we walk them through what we need off the
15 receipt to validate that transaction.

16 So in this case -- it also we have a second
17 step that they put the total of the receipt in, because
18 we get all the POS data from the retailer, so we can
19 actually match to make sure that if by chance somebody
20 was trying to fish through the system and enter specific
21 areas or at specific data points we still have the
22 ability to weed them out through the actual total of the
23 receipt. It's a big fraud issue, from our point.

24 The status, the status page, it's available 24-
25 7, it shows you your pending rebates, it shows you the

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1 rebates paid, it shows the rebates not approved. Also
2 with this slide if there was a multiple purchase piece,
3 buy the printer, buy the laptop, buy the monitor, if you
4 bought two of the three but didn't buy the third it would
5 tell you right there what you needed to do to make that
6 additional purchase.

7 This is sort of where we're headed after the
8 assumption that the consumer actually makes their
9 purchase online, or redeems the rebate online, or mails
10 it in, and they've got a valid rebate.

11 Let me get to my page. And this is where we
12 think the sort of the next generation of what we're doing
13 is headed. It's a rebate option acceptance maximization.
14 The platform provides the options for the consumer when
15 they're actually validated for their rebate to get
16 multiple payment options. So in this case what we do, we
17 take the vendor product information, the rebate amount,
18 the demographics that were collected earlier, the
19 transaction profile of the consumer based on previous
20 transactions, we put it through the system, and then
21 understand that these offers on the righthand side are
22 the most likely to appeal to that consumer. Okay.

23 So if a 37 year old male goes in to purchase a
24 Epson printer we'll change on the fly here to HP. So
25 what happens is we know what they purchased, they've got

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1 a \$50 rebate, they enter it online, it's validated,
2 there's no mail-in, there's no UPCs, it goes through the
3 system, and then it will spit out relevant offers based
4 on that. So in this case we could use Snap Fish where
5 they'd get a \$75 value for going to Snap Fish at that
6 time, instead of the Epson cartridges and printers. So
7 they're actually vendor-specific.

8 If, in fact, they don't want it, they can click
9 through that piece and they don't want that actual offer
10 they can go to another offer. So another alternate
11 redemption choice could be based on the fact that they
12 had earlier given us that information. The other piece
13 is that all these other offers which are always valued at
14 above the cash value of the rebate. So if they didn't
15 want to do that, we sort of go to the second and third
16 level offers, which go back to there's a Comp USA rebate
17 card, no expiration date, and no dormancy fees for those
18 cards. If, again, another shot at if they wanted to get
19 their rebate tomorrow they could use the PayPal method,
20 and if they were feeling I guess philanthropic they could
21 donate to Make A Wish.

22 Now, at this point in time the consumer always
23 has the option to go back for a check if they really
24 wanted to check. It's there, it's just we give them a
25 lot of offers up to that point to try and change their

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1 behavior.

2 And at this point in time the consumer actually
3 chooses a card, and if they use the card in a certain
4 period of time at Comp USA or at Comp USA dot com they
5 get a 10 percent discount off their order.

6 Again, everything that we're doing today is
7 either under patent protection already or actually in the
8 process of being patented. In our situation we believe
9 that everybody wins, because the consumer wins. There's
10 a complete transparent process for the consumer to see
11 all through the steps as to where they are with their
12 rebate. The retailer wins because they don't have any of
13 the backlash or brand suicide, as Hal mentions. And then
14 the manufacturer wins obviously because of all those
15 reasons. And we have a happy customer that actually buys
16 more product from that brand and from that retailer.

17 That's pretty much it.

18 [Applause.]

19 MS. HARRINGTON: I'm going to stay seated right
20 here, because I need to read my notes. I've been taking
21 furious notes as our first two panelists presented, to
22 provide hopefully some useful further questions,
23 reactions, responses, so that you can watch at least in
24 real time how one person who works at the FTC might think
25 about some of these developments as they are playing out.

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1 First, let me turn to Matt's wonderful
2 presentation about developments in state law and respond
3 with some thoughts about those. My first thought was
4 that one of the things that makes as I listen to Matt
5 talking about enactment of specific state laws and
6 consideration of other legislative and regulatory
7 provisions at the state level, my first thought was that
8 one of the things that makes the Federal Trade Commission
9 perhaps a somewhat different governmental entity is our
10 very heavy reliance on economic analysis and our valuing
11 of that as we go about thinking about what the most
12 sensible approach is to government intervention in the
13 marketplace.

14 We, sometimes to the consternation of our
15 critics, take quite a while in our formulation of
16 marketplace issues and our response to those. And one of
17 the reasons that we take quite a while is that we want to
18 rely on empirical evidence to inform our assessment of
19 what it is that is happening in the marketplace. We want
20 to try to avoid what are often unintended consequences
21 that can flow from regulation or legislation that may
22 seemingly really hit right on the head of the nail the
23 problem with some marketplace development, but when you
24 look more deeply instead of hitting the nail right on the
25 head you wind up splintering and shattering the very

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1 valuable prospect that you're trying to protect in the
2 first place, which is the prospect of good value for
3 consumers.

4 And so as I listen to the description of
5 various state efforts to regulate in this area, my
6 question is what do the economics tell us about that
7 particular approach.

8 So let's look first at the category of price
9 advertising. We heard that there have been enacted laws
10 that say that you cannot advertise at all the price after
11 rebate. And I'm wondering, and maybe somebody here knows
12 the answer to this, Joe, are you here still? No, Joe
13 Mulholland?

14 MS. ABRAHAMSON: I know the answer to the
15 question.

16 MS. HARRINGTON: Well, let me -- is Joe
17 Mulholland here? Rats. I'm wondering what we know about
18 what's happening in Connecticut, where the law apparently
19 prohibits advertisements of price after rebate. What is
20 the answer to my question?

21 MS. ABRAHAMSON: Actually, there's a slight
22 misstatement of the law. What the law says is that --

23 MS. HARRINGTON: Okay. Can everybody hear?

24 SPEAKER: No, you need a microphone.

25 MS. ABRAHAMSON: No one has ever said that to

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1 me in my life. Are we being recorded?

2 SPEAKER: And please introduce yourself.

3 MS. ABRAHAMSON: My name is Tsan Abrahamson,
4 and I'm a (inaudible) attorney, I'm outside counsel, but
5 we've dealt with this issue several times. What both the
6 Connecticut and the Rhode Island laws say is not that you
7 cannot advertise the net price, but that if you do you
8 must give the rebate at point of purchase. So what that
9 means is you can say buy an HP printer and get a \$20
10 rebate and you can do a mail-in rebate for that, or an
11 online rebate, but if you say buy an HP printer and
12 you'll only pay \$100 after rebate, that is the net price,
13 you must give that rebate at point of purchase.

14 MS. HARRINGTON: Okay, thank you for that.

15 Matt, did you want to say something? Hold on.

16 MR. EDWARDS: Yes, that's absolutely correct.
17 And in the interest of simplifying the presentation I may
18 have overly simplified what the Connecticut law says, but
19 that's right, that's absolutely right.

20 MS. HARRINGTON: The concern is, my concern
21 would be the same, and that is whether this, and I don't
22 know the answer to this, but the concern we would have is
23 whether this particular regulation would have the effect
24 of discouraging the distribution of truthful information
25 to consumers that could be of benefit.

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1 And the question, the way that we would look at
2 this always is under the Section 5 standard that Dean so
3 well explained, and that is whether there is material
4 information that is misrepresented or that is not
5 adequately disclosed in a way that in light of the
6 overall impression left by the ad causes consumers to be
7 misled.

8 And I'll put in another plug just using that
9 example for what we think is the value of the elastic
10 principle that is set forth in Section 5 of the FTC Act.
11 So rather than prohibiting a particular kind of claim, we
12 would look at the claim or the information that's
13 provided in light of the entirety of the ad and ask what
14 a reasonable consumer would understand the claim or the
15 advertisement to mean. So that would be a concern I
16 think that we would have, and a reason why generally
17 speaking in the area of price advertising you don't see a
18 lot of activity from the Federal Trade Commission.

19 Now, you might say well but you do have these
20 guides on price advertising, and what I would say is yes
21 we do, and those guides were promulgated a long time ago.
22 And if you go to our website and look at our enforcement
23 agenda and study our casework you won't find press
24 releases announcing FTC enforcement actions based on our
25 deceptive pricing guides, or any of the other pricing

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1 guides. Which isn't to say that we never would do such a
2 thing, but we have a concern, a real concern about
3 unintended consequences that can flow from this kind of
4 regulation. And we've learned, I think everyone has, and
5 as the school of law and economics has grown up over the
6 years I think everyone has learned. And so hopefully we
7 benefit from that.

8 I was interested in the laws that require
9 rebate form availability and provide the safe harbor for
10 reasonable expectation of response. That reminded me,
11 you know, of the whole issue about rain checks a number
12 of years ago. Same kind of issue. There were efforts
13 made to require that retailers either have insufficient
14 supply to meet 100 percent of the demand that item that
15 was advertised, or that if rain checks were offered that
16 there be some reasonable expectation, that there be some
17 requirement that they have at least enough of the item on
18 hand to meet reasonable expectation. There were efforts
19 made, and maybe there are laws on the books in states,
20 that essentially would prohibit the use of offer of rain
21 checks, and say instead you have to have enough product
22 on hand to meet 100 percent of the demand. Well, the
23 unintended bad consequence there was that consumers then
24 never had the opportunity to buy the item on sale,
25 because no retailer wanted to run the risk of not having

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1 enough to meet the very last of the consumer requests for
2 that product. And that didn't serve consumers well. An
3 effort to regulate to protect consumers in some places
4 really backfired and deprived consumers of the
5 opportunity to buy the product on sale. Nobody wanted
6 that.

7 And so, again, we learned. And by sharing that
8 reflection in no way do I mean to say that people who
9 advocated for consumer interests in those instances were
10 wrong or did something bad, it's just that we learned.

11 I was interested in the comment regarding the
12 ban on mail-in rebates, you know, where legislators or
13 the proposed ban on mail-in rebates where legislators are
14 relying on press accounts on things that happened.
15 Again, bringing it back to the value of empirical
16 evidence and really analyzing that before legislating or
17 regulating.

18 Future challenges that Matt mentioned, you
19 know, what will happen as more and more states or local
20 governments move in with very specific laws or
21 regulations in this area. Is it better to have a variety
22 of different regulations, or will there be a call for one
23 national standard. I guess I would make the observation
24 that we think we have one national standard, and it's
25 Section 5 of the Federal Trade Commission Act. And I

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1 think we would likely say, at least I would likely say,
2 and I finally probably should issue the disclaimer that
3 these comments reflect my views and not Dean Graybill's
4 views, not Jeffrey Klurfeld's views, not Matt's views,
5 but they're my views alone. And also I would bet that if
6 we took a poll and the FTC -- among the FTC staff -- that
7 the majority of us would think this way, why should this
8 kind of advertising be treated differently than other
9 kinds of advertising generally.

10 Now, sometimes Congress finds that there is a
11 need to have a particular set of standards apply to a
12 particular kind of advertising where there are important
13 public interest needs for that kind of specific
14 regulation. If the Congress were to do that here, we
15 would of course say, you bet, you pass the laws, we
16 implement them as you direct us to. But stepping back
17 and asking the question about whether we would use our
18 regulatory authority here, I think the answer is no we
19 wouldn't generally. We think that Section 5 is a very
20 good standard generally to apply to all advertising, and
21 that we would always wonder whether there are special
22 needs that would require a departure from that general
23 principle for any particular kind of product or service.

24 So those were the thoughts that I had in
25 response to your presentation, Matt.

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1 Chris, what an interesting model. It was
2 innovative and interesting. And one of the questions
3 that I had, and you people from the industry in the room
4 can tell me this, is the word breakage a relatively
5 recently developed term or has that always been around?

6 MR. STINCHFIELD: It's always been around. The
7 confusion becomes the difference is between the --

8 MS. HARRINGTON: Hold on, Hal, we're going to
9 get a microphone. Hal answering the question is the word
10 "breakage" new, or is it being used more often than
11 previously.

12 MR. STINCHFIELD: Hi, this is Hal Stinchfield.

13 MS. HARRINGTON: Or why am I hearing it all the
14 time this year, and I never really heard much about
15 breakage before?

16 MR. STINCHFIELD: That's a good question. It
17 refers to the financial model dealing with the subject of
18 mail-in rebates. And there are two terms here. One is
19 breakage, which is the enticement of a product sold as a
20 result of the enticement of a rebate offer but not
21 actually redeemed. So that's someone who intended to
22 redeem but didn't. And then the term "slippage" refers
23 to a reward issued that has never been cashed.

24 And it's fairly current today simply because of
25 all the legislation around the 42 state legislators going

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1 after rebates as a form of (inaudible), and I think that
2 has raised the visibility, as has the value of rebates
3 over the past several years going from a hundred million
4 dollars to six billion dollars.

5 MS. HARRINGTON: Thank you. Slippage,
6 breakage, you know, disease-age, it sounds like we could
7 be at a personal injury law conference.

8 One thing that I was interested in was Chris's
9 comment that the online program he was describing has the
10 potential to shift rebates from a breakage model to a
11 redemption model. And I was just -- I thought back to
12 Professor Silk's presentation about the finding that
13 those who don't redeem are more likely to avoid the next
14 offer, if I think I've characterized that -- and just,
15 you know, how then if that's the case making that shift
16 from breakage to redemption might be a smart thing from
17 the manufacturer's point of view, would stands to reason,
18 and would help to avoid what I guess Hal referred to as
19 brand suicide, perhaps.

20 Then as I watched the presentation on how the
21 online redemption works or might work, one thought that I
22 had is that as whether for an online redemption or any
23 other purpose a lot of information is gathered from the
24 consumer who is going to make the redemption request,
25 would there be instances where it would appropriate to

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1 make disclosures about why the information is being
2 collected? Would there be some need to talk about how
3 that information is going to be used? Should there be a
4 privacy policy included? And then we get into the whole
5 question of how those policies are best disclosed. And,
6 of course, the cardinal rule that you have to honor the
7 privacy promises you make or we'll sue you.

8 Next thought that I had is particularly where
9 in the example that we saw information is gathered, and
10 consumers can go back on their E-bate [sic] account, or
11 their E-Rebate account, and look at the history of their
12 usage. There's a lot of information being collected
13 there, and the general requirement that the party that
14 holds that information have reasonable and appropriate
15 procedures in place to protect any sensitive personal
16 information that is included in the information that's
17 available online would apply.

18 The FTC has brought 14 cases in the last couple
19 of years challenging various entities failures to have in
20 place reasonable and appropriate procedures to safeguard
21 consumers' personal information. We've brought those
22 cases also under Section 5 of the FTC Act. We think it's
23 a law that's good for all seasons and all marketplace
24 developments, including data security. And so if you are
25 collecting that kind of information and it's available

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1 online and accessible online you better make sure that
2 you've got appropriate and reasonable procedures in place
3 to safeguard it. We've brought some cases where highly
4 reputable retailers have shockingly had information
5 sitting on a network where the network wasn't protected
6 from the most basic and commonly known of hacking
7 programs and products. You've got to safeguard the data.

8 Another question that I had on the rebate
9 option acceptance maximization program, where there are a
10 number of screens that you go through until the first
11 choice that you saw was -- the first -- there was a
12 question about do you listen to XM radio or do you like
13 XM radio or something, and I wondered, and I'm not really
14 sure how we would view this. But the question that I had
15 was whether it would be material, whether a material
16 piece of information that might be included on that
17 screen is like if you say yes you're not going to see the
18 other choices, or if you say no you're going to see a
19 bunch of other choices. That is, and I don't know how we
20 would look at that, it's just a question.

21 But if consumers don't know what the
22 consequences or the implications are for answering a
23 question a certain way, and it would be material for them
24 to know those consequences, then maybe there's a need for
25 a little bit more information on that slide. And I

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1 actually look forward over lunch to talking to some of my
2 colleagues about what they think about that. I asked the
3 question without offering a conclusion.

4 MR. QUINLAN: By the way, it does say that.

5 MS. HARRINGTON: It does?

6 MR. QUINLAN: Yes. It actually says, "no
7 thanks, I prefer another payment option" if they click,
8 "no."

9 MS. HARRINGTON: Okay. Well, good
10 qualification, is that enough? Then that's my question,
11 is that enough? Did I get it, would I get it, should I
12 get it? I don't know.

13 Rebate cards offered. Gift cards. The FTC has
14 recently announced settlements in a couple of gift card
15 cases. There's been a shift we know in the gift card
16 industry away from dormancy fees and expiration dates,
17 but if there are on those, important to disclose.

18 And, finally, I was interested in the Master
19 Card product, it says, "accepted wherever Master Card is
20 offered." And I just had a question, I wondered, you
21 know, really? Can you get a cash advance on that card,
22 is that what that means? Or what does it mean to say,
23 "accepted wherever Master Card is offered?" And, again,
24 I look forward to talking to my colleagues about that.

25 So those were, Matt, my quick thoughts

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1 listening to these presentations about how we might view
2 them.

3 [Applause.]

4 MR. GOLD: Thanks everybody for those
5 presentations. I've gotten a number of questions from
6 the audience, and we've got time for at least a couple of
7 them.

8 First, following up, Eileen, with what you were
9 discussing about the additional offers that are provided
10 to consumers in PlusNet's model. One member of the
11 audience wonders since the consumer signed up for a
12 rebate and goes on to redeem the rebate, and Comp USA or
13 PlusNet gives them the -- it says, 'requires consumers to
14 submit to a sales pitch and see other promotions in order
15 to get a rebate,' should this be disclosed somehow ahead
16 of time. And the second question is, is this an unfair
17 practice?

18 MS. HARRINGTON: Well, the nature of this whole
19 site is marketing. I'm not sure that some disclosure
20 that somebody is going to make offers on this site is
21 material information, the disclosure of which is needed
22 to prevent some kind of consumer injury or harm, or the
23 likelihood of harm. So my initial response to that is
24 no, no, and no.

25 MR. QUINLAN: The other thing is the consumer

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1 always has the option --

2 MS. HARRINGTON: Does anyone else think
3 otherwise from the FTC? We could have a little debate
4 right here.

5 MR. QUINLAN: The other thing is the consumer
6 always has the option in the end and be to get the check.
7 So if they go through the process and don't decide to
8 purchase anything and/or don't decide to even a gift card
9 they can get paper checks.

10 MR. GOLD: Okay. Another member of the
11 audience, this one's directed to Matt Edwards. Talking
12 about the Connecticut and Rhode Island laws, which
13 prohibit essentially doing the math at a retail
14 establishment. Is a website, do you know whether a
15 website with an order page is considered a retail
16 establishment under those laws?

17 MR. EDWARDS: No, I don't know.

18 MR. GOLD: And this one for Chris Quinlan. Do
19 you, I think you mentioned during your presentation that
20 even though you've got the online option, something like
21 28 percent of consumers still send in prefer to do it by
22 mail, do you have any idea why 28 percent of consumers
23 still want to do it the old-fashioned way rather than
24 doing it online? And also is this number consistent or
25 has it been changing?

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1 MR. QUINLAN: Well, the first part is it's
2 definitely been changing, it's been going down. So the
3 online submissions have been rising. As I said, the
4 updated numbers throughout April 15th across three
5 different classes of trade, which is drug, grocery,
6 consumer electronics, is 75-25. One of the things that
7 we learned, and it's a while back, but with price line
8 there's a lot of backlash because people couldn't
9 actually go to a computer, and if they didn't have a
10 computer they couldn't bid on milk. So I'm assuming that
11 those same people don't want to go online and submit
12 their rebates, they want to just mail it in the old-
13 fashioned way. The only difference is it's a much more
14 simplified process, because all they really have to do,
15 and in some cases with their loyalty card number attached
16 we don't even need their name and address, we get that
17 file from the retailer with the transaction.

18 So all they actually have to do is drop the
19 receipt into the mail and we process it for them. All
20 we're doing is taking the receipt information on a mail-
21 in and punching it into the system, data entering it.

22 MR. GOLD: Okay. And the question that I have
23 for you, Chris, is I think part of your model or one of
24 the attractive things parts of your model for consumers
25 is the high percentage of consumers presumably who will

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1 attempt to redeem, and the relatively low redemption
2 rate -- low -- relatively high redemption rate and the
3 relatively low denial rate. Have you gotten any push-
4 back [sic] from clients or potential clients who were
5 concerned about these things?

6 MR. QUINLAN: No, the redemption rates haven't
7 changed materially. And I think, I forget who was
8 talking, I think it might have been Tim Silk, the whole
9 idea is it's the rebate ratio that drives the redemption.
10 It's the percentage of the cash that they're going to get
11 back whether they're going to mail it in or do it online
12 really hasn't materially changed the rate, if you will.

13 So we have -- the other side of that coin is we
14 can project, if a vendor has a budget and they were doing
15 \$50 rebates but didn't have any visibility into that, we
16 can actually give them visibility to actually show them
17 what their potential redemption rate's going to be based
18 on their historical PLS data. So we can actually help
19 them manage that cash flow. So if redemption did go up,
20 is my point, we could ratchet back the potential rebate,
21 and they'd understand it could still stay within that
22 budget.

23 MR. GOLD: How about the other half, the low
24 rate of, relatively low rate of rebate redemption
25 denials?

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1 MR. QUINLAN: Well, again, we got into the
2 business based probably on the consumer side of things,
3 more so. And our whole idea was to make it easier for
4 the consumer, so we don't have a rejection rate that's
5 very high because it's sort of infallible information
6 that's being passed back and forth between us in the
7 retail end or vendor.

8 MR. GOLD: Okay. I'd like to thank our panel
9 again. I think that's all we have time for.

10 [Applause.]

11 MR. GOLD: As we speak, a phone call is coming
12 into the cell phone that it's vibrating, and there are a
13 couple of calls that whoever's missed. Did anybody
14 misplace a Samsung telephone? I will continue to hold
15 onto it.

16 We're going to reconvene at 2:00 o'clock. You
17 can leave your folders here.

18 [LUNCH]

19

20

21 **PANEL 4: INDUSTRY SOLUTIONS: EXPLORING BEST**
22 **PRACTICES IN REBATE PROMOTIONS**

23 MS. BADGER: My name's Linda Badger, and I'm a
24 staff attorney at the western region of the Federal Trade
25 Commission. And now that you're all full from lunch, I

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1 was going to say now that you're all full from lunch we
2 can start with the meat and potatoes panel, which is
3 hearing practical solutions to the rebate problems we've
4 all been talking about this morning and this afternoon.

5 First, we're going to hear best practices from
6 a manufacturer's point of view. Manufacturers are
7 ultimately responsible for every aspect of rebate
8 promotions, from designing and advertising them to
9 funding them and to having them fulfilled. And to give
10 us this front-line perspective we're very pleased to
11 welcome Mr. Christopher Ekren, who is the Senior Vice-
12 President and Deputy General Counsel of Sony Electronics.

13
14 So take it away, Chris.

15 [Applause.]

16 MR. EKREN: So thank you, Linda and Matt, and
17 also everyone here. Sony views this area of great
18 importance, and we really appreciate the chance to
19 participate in this activity.

20 So obviously I'm with the law department at
21 Sony. But the rebate responsibility is a corporate
22 responsibility, it's not something that the law
23 department owns or runs. But it's something that we're
24 very intimately involved with, as a corporate culture
25 we're part of a team. As an in-house lawyer I am part of

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1 the senior management culture that we try to inculcate
2 within our organization.

3 So the essential elements in any best practice
4 obviously is that senior management support and
5 visibility in a clear corporate culture. In our
6 corporation our president gets metrics (phonetic) and
7 gets reports, and holds people accountable for how we
8 manage our programs. This is something that very
9 consciously those around him inject him into that role
10 and get him the information so that we can drive the
11 culture that we need to be effective and have effective
12 rebate programs.

13 Our program basically is one of selecting third
14 party vendors, because we don't have a core competence in
15 our company of managing the very specialized process of
16 rebates. And we understand there are companies that have
17 developed the expertise that have the infrastructure, and
18 it's not cost effective for us to build in a staff and
19 manage all of that. So we have to be then partnering
20 with people. We go through a formal RFP process, we look
21 at in depth capabilities, we've developed a questionnaire
22 over time, we continue to add to it, looking at the
23 organizational structure of who we're going to partner
24 with and work with. During in person interviews, site
25 visits and inspections, we build into the contract key

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1 metrics and reporting.

2 The vendor selection is the most important
3 aspect of this, because you really do have to put your
4 company's reputation and your reputation with your
5 consumers in the hands of a third party.

6 And we're a large company. So some of the
7 things we're going to talk about here are perhaps not
8 relevant to every organization. But from our perspective
9 we felt, because we have many divisions that, for
10 example, a camera division, or a PC division, etcetera,
11 having an expertise in every division about how to do
12 rebates in the best way was not cost effective, and it
13 could lead to inconsistent implementations.

14 And so over time we decided we needed a central
15 program management office, and we decided that rather
16 than having someone loan from one department that
17 probably had three other people pulling them in different
18 directions, we were going to say there's going to be a
19 dedicated coordinating head count.

20 Secondly, to standardize the process and to
21 make sure that all of the issues were really thought of
22 and thought of ahead of time, we developed a launch form
23 that not only created a sort of internal directive for
24 our program management office to proceed with the
25 implementation, but also made sure the vendor was only

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1 getting directions from a central point within our
2 company. Because otherwise what will happen is you'll
3 have 15 people that have different pieces of a promotion,
4 you'll have a marketing manager, you'll have maybe
5 someone in the sales office, some of them dealing with
6 Costco, some of them dealing with Parago, and they're all
7 separately communicating, and that can and is a recipe
8 for miscommunications, and ultimately you don't know who
9 the owner of a decision is.

10 This is an eye chart, I'm sorry, but there is a
11 lot to talk about with training. We do work with our
12 vendor account management teams to understand how our
13 internal processes work. We work with the vendor
14 customer services teams, and also how to handle the
15 customer issues. Create exception guidelines for the
16 customer reps. We have a confidential set of guidelines
17 for escalation type issues. And, of course, we do
18 monitor individual sample interactions with consumers to
19 make sure that the overall standards we've agreed to are
20 followed.

21 In terms of the actual rebate coupon, what a
22 lot of the learning we've had is that you just have to
23 keep things simple. And so we created standard coupon
24 templates in terms and conditions. The reason why we did
25 that is because if you have as in our company you do over

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1 30 marketing groups, everybody tried to have their own
2 coupon to fill slightly different parameters, different
3 ideas of sort of what the marketing edict was going to
4 be, what you are trying to drive there. And from an
5 efficiency standpoint we found that once you learn
6 certain lessons you should probably just continue to
7 leverage those and not recreate the wheel.

8 But we also took into account what our vendor,
9 I mean our resellers were telling us about what's easy
10 for them to explain and administer, and what consumers
11 can understand. And I think one of the lessons, and we
12 constantly battle this, it's never one battle, is try to
13 keep things very simple. Because while I think a lawyer
14 can understand a certain level of language and perhaps
15 I'd like to think most of our employees are sort of in
16 the marketing area have college degrees and have a
17 certain level of expertise in language, that isn't
18 necessarily the demographic that's going to be
19 interacting with the form.

20 One of the things we did as an online pre-
21 qualification, and I know a number of vendors support
22 this, it almost seems a little bit counter-intuitive to
23 require or suggest, and it's actually a suggestion, not a
24 requirement, somebody to go online and fill out or answer
25 the questions they'd be answering anyways if they were to

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1 fill out the coupon and mail it in, and then determine
2 whether in fact they are qualified for the rebate.
3 Because if someone can fill out a coupon properly why
4 would they have to go through an online process. So it's
5 an optional thing, but what we often find is people don't
6 read carefully the instructions. Sort of going through
7 this process as part of the submission process actually
8 helps them determine something that perhaps they can cure
9 a better document so that they don't get rejected and
10 they can get their money, or whatever they're looking
11 for, as quickly as possible.

12 So I would recommend that. It's something that
13 the team told me really is kind of a tweak to the process
14 that may seem a little bit counter-intuitive, but really
15 does seem to help. From a retailer's standpoint, and I
16 think there's been a lot of progress in this area, a lot
17 of legacy systems perhaps don't support every capability
18 that you'd want to have to completely consistently
19 represent rebate terms. So there's always an issue, well
20 you only have 50 words, what can you fit in here, because
21 we can only put so much on this little rebate slip. And
22 that's how our company's going to do rebates, it's our
23 way, or we're not going to do rebates with you, Sony.

24 I think that what it requires is teamwork and
25 partnerships so that when the retailers are doing their

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1 implementation and you do negotiate with them about what
2 really the consumer has to see, and make sure that that
3 does get supported through their IT people and their
4 system people.

5 From an inventory standpoint, when you're
6 having a product that people are seeking to receive, you
7 obviously need to have the products available. And that
8 may seem extremely simple, and why can't that happen, but
9 in a place like Sony that has a very complicated supply
10 chain and all the vagaries of suppliers, there is a
11 certain -- we run out of products all the time when we're
12 trying to sell them just generally to consumers, and it's
13 bad demand planning, it's things are more popular than we
14 expected.

15 When you're offering any rebate there's a
16 certain breakage rate that might be assumed, and when
17 you're offering any premium there's a certain amount of
18 people you expect will want it. But whatever turns out
19 that whatever (inaudible) you're looking at becomes the
20 rage for children, because they absolutely have to have
21 it, then suddenly it's 2X what you expected, and that can
22 happen. Do you have the relationship with the supplier
23 that can supply that? If supplier A is not going to be
24 able to supply that, do you have a supplier B? So we try
25 to create this certain amount of expectations to our

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1 marketing people about what they have to line up before
2 they put this offer out to the public.

3 And secondly, be able to give people an alternative to
4 cash if we can't meet the expectation with, of course,
5 the intent that we'll hopefully meet the expectation.

6 From an invoicing and funding standpoint, and
7 this is something also, and again this is a big
8 corporation type of issue, but we're talking about best
9 practices and what we've had to do internally here to
10 really satisfy what we think consumer expectations are.
11 What we found is that a normal paid invoice in my
12 bureaucratic company it takes an awful lot of people if
13 it's a lot of money. And there's a lot of money that
14 flows through rebate, so we needed to make sure that
15 things weren't getting held up unless there was a real
16 reason to hold it up.

17 And our internal processes were developed so
18 that if someone wasn't moving on something fast enough,
19 to pay a vendor, to fund something we promised consumers,
20 we were going to assure that it got escalated to somebody
21 else in the organization that could move the thing and
22 move the process forward. So there is with a lot of
23 internal controls, and I know every company here knows
24 about Sarbanes Oxley, the need to not just have anybody
25 in a company just say pay a large check to somebody.

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1 Balancing that need with the need to be responsive to the
2 deadlines that we've committed to is something that we
3 spend a lot of time thinking about and put in the process
4 for.

5 But anything that is customer related does take
6 a priority from a vendor standpoint, and it's a slightly,
7 it's a different process because vendors are commercial
8 companies and we have a contractual relationship with
9 them where we can build in exactly what the payment
10 expectations might be.

11 So I talked about reporting at the very
12 beginning, in terms of how our CEO does get a roll-up
13 report that talks about how we are performing to our
14 promises, and also internally, you know, just some of the
15 metrics we want to measure our internal people and how
16 effective they are in running these processes. There's
17 online access to it, it's prepared daily. There is a
18 report that talks about how we're doing, and from the
19 various standpoints the idea is to build enough of an
20 alarm that if things aren't going right you can do an
21 investigation and fix it before it actually gets felt by
22 anybody.

23 From an inventory standpoint, again, the intent
24 is knowing our supply chain, knowing the vendor
25 relationships. Often -- I guess maybe we're unique in a

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1 sense, in that a lot of our (inaudible) actually are
2 other Sony products, but it isn't necessarily always, it
3 could be like a backpack or something that is made by an
4 out-source. So we do need to have the reporting there to
5 keep that going properly.

6 So again, we have a couple other reports going
7 on with detailed reasons and issues that are coming up.
8 One of the benefits is, is that if you see a trend going
9 wrong you can -- in a sense you may not know the reason
10 why but you can do an investigation, and perhaps the
11 vendor is being a little bit too aggressive in looking at
12 the exact requirements, and we can decide as a business
13 decision, even though perhaps legally we don't have to
14 give the customer the money, we're going to tell them,
15 listen, from an expectation and a happiness standpoint
16 it's just better if we relax those guidelines. And then
17 that's a business decision that's made with the law
18 department sometimes.

19 So that was just a really quick run-through. I
20 know I have a limited time there. I know there's a Q&A
21 session that we're hoping for. And I think it will be
22 probably more interesting when you have the Parago
23 perspective and Costco perspective to sort of
24 synthetically add all this up and talk about how we work
25 through the entire process to meet the customer

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1 expectations.

2 And I appreciate it, again, the chance to talk
3 about those questions when they come.

4 [Applause.]

5 MS. BADGER: Well, thank you, Chris, very much
6 for that presentation. And I want you to know that if
7 you have questions just pass them to Matthew Gold here,
8 and we can get those questions answered after the panel's
9 over.

10 Now, I'd like to -- we're going to hear from
11 Mr. Mike Reynolds, and he's the Executive Vice-President
12 of Marketing Development and Strategy for Parago, Inc., a
13 prominent national rebate processor fulfillment house.

14 Fulfillment houses, or rebate processors,
15 really do the nitty gritty work in fulfilling and funding
16 rebates, opening all the envelopes or looking at all the
17 forms, and they're often caught in the middle when things
18 go wrong.

19 So let's hear from Parago's Mike Reynolds about
20 best practices from a fulfillment house's point of view.

21 MR. REYNOLDS: Thank you, Linda. I also would
22 like to thank the FTC for putting this together today.
23 It's a great opportunity really to discuss rebates end to
24 end throughout the entire supply chain. And hopefully
25 this is the beginning of many discussions going forward.

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1 So we certainly appreciate the opportunity.

2 A little bit about Parago, for those who don't
3 know. We were founded in 1999, and we are a promotional
4 services company. We've really been focused on elevating
5 industry standards since that time. The founders of the
6 company did not come out of the rebate processing space,
7 but we saw it as an opportunity really to improve what
8 had been at the time a process that obviously was long
9 and drawn out, had some issues, and technology could
10 solve some of those. And so many of us came out of the
11 technology space.

12 We're really focused in on four pillars with
13 the company, that being integrity, service, leadership,
14 and innovation. I'm going to give you a sense of that
15 through some of my remarks today. The key here has been
16 working very closely with our clients. As you've heard,
17 it's really a collaborative effort to process rebates and
18 to put rebates out into the marketplace. And so that
19 partnership is critical in working together with the
20 clients to achieve optimal results in terms of the
21 promotion itself and the consumer satisfaction.

22 Finally, I mentioned that we use technology.
23 We have invested a tremendous amount in our technology
24 infrastructure. And the focus has been to increase the
25 accuracy of rebate processing, as well as the speed. And

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1 I'll show that a little bit later.

2 I do want to also add here there have been
3 discussions throughout the morning regarding valids and
4 invalids, and the rates, and those types of things. And
5 while we're not yet to the 3 percent industry-wide that
6 Hal mentioned, we're getting closer. And it's really the
7 culmination of a couple of things, one has been the
8 promotional design. And that's been talked about
9 throughout the morning, how critical that is to really
10 drive the percentage of invalid claims down lower and
11 lower, because the promotion rules become much clearer,
12 and it becomes much easier for the consumer.

13 We have also, through the technology, used a
14 rules-based transaction processing engine that we
15 developed, again, for accuracy. So the point is to
16 really focus in on accurately processing the rebates, and
17 if they are valid, pay them, pay them quickly. If
18 they're invalid, notify the consumer quickly, and give
19 them not only the reasons but how they might be able to
20 rectify that situation.

21 As a result, we've seen invalid -- or valid
22 rates increase to as high as 92 percent. So 8 percent
23 invalid rates, with the top reasons for invalids
24 typically being missing store receipt, missing UPC,
25 postmark was out of range with the promotional rules, or

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1 the purchase date was outside of the promotional rules.
2 You find those are the top four reasons for invalids. In
3 a lot of cases the consumer, for instance, it was a
4 missing store receipt, has the opportunity then to send
5 that store receipt in and for that claim to be converted
6 from an invalid status to a valid status and get the
7 check out.

8 So there's a lot of best practices from a
9 processing perspective. I'm just going to focus in on
10 four today in recognition of the time here. Those four
11 being paperless rebates, and we heard a little bit about
12 that this morning; fast-turn times; submission scanning;
13 and promotion design. All of these things are really
14 best practices that tie back up to a consumer-centered
15 approach to rebate processing, which is key, and
16 obviously the basis for a lot of our conversations today.

17 So let me start with paperless processing. We
18 got a good overview of this this morning, but the idea
19 being eliminate the mail-in portion, and use the point of
20 sale transaction data to validate the claim, and to do so
21 very quickly. And certainly with the proliferation of
22 the internet this is becoming more of an opportunity for
23 the base of consumers in this country. So we have built
24 solutions that really allow the consumer to go online,
25 submit at that -- online at that time, and capture the

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1 data that they've got. And in many cases, and I'm going
2 to show you an example of the Staples situation, if that
3 online process has happened within say a couple of hours
4 after the actual purchase we already have access to the
5 transaction data to be able to indicate to the consumer
6 right there on the spot whether their claim appears to be
7 valid or invalid, based on a combination of the
8 transaction number as well as the products that were
9 purchased in that transaction.

10 Once we've received the point of sale data and
11 therefore have the transactional data, which is the proof
12 of purchase for the rebate, then we can move it very
13 quickly through the process. One of the things that we
14 have to be very careful about is fraud. And one of the
15 aspects that we look at specifically for paperless is
16 returns. And so in many cases the submission will be in
17 essentially a hold period for the term of the return
18 window. Therefore, if the consumer were to take the
19 product back they would get their full refund of the
20 purchase price, we would be able to validate that against
21 the transaction data and it wouldn't get the rebate.

22 And of course the flip side is true as well.
23 If they have not returned within that window, then the
24 rebate check is sent out immediately. We obviously try
25 to keep this a very tight window.

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1 And then of course if it's invalid, and with
2 paperless you see virtually no invalids because you're
3 able to tell the consumer right there that the claim will
4 be invalidated because the right product perhaps wasn't
5 purchased within that transaction. But it also gives
6 them an opportunity to correct that mistake, perhaps
7 they've put in the wrong transaction identifier, as an
8 example, so they can re-key that and it can be moved to
9 the valid state.

10 There are many benefits to paperless rebates.
11 Consumers obviously have a much better rebate experience.
12 We are able to proactively notify them of the validation
13 or whether it's invalid. Fast turn times, we're really
14 able to contract that period of time. The client also
15 sees tremendous benefits, virtual elimination of fraud.
16 Fraud has been a big issue in the rebate industry. We at
17 Parago, and my peers at other rebate processors, have
18 been working diligently over several years now to remove
19 as much as we can fraud out of the rebate industry.
20 Paperless virtually eliminates that rebate fraud, so
21 there's a big benefit there.

22 Also the accuracy of submissions. We get some
23 handwriting that's very difficult to read. So when it's
24 done online the beauty of that is that things like the
25 consumer's address where the check is going to go is very

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1 accurate.

2 And finally, brand extension. From that I mean
3 that it really, because it's a good consumer experience,
4 elevates the client's brand in the eyes of the consumer.
5 And actually what we're finding is that this is driving
6 loyalty, loyalty of that consumer, frequency and recency
7 of purchases. And, in fact, one of our best clients, Ace
8 Hardware, recently launched Ace Rewards, which is their
9 loyalty program, and they have integrated paperless
10 rebates into that solution so that their loyal members
11 are receiving all of the benefits of paperless rebates.

12 The experience, you saw it this morning, this
13 is very similar in the case of Staples easy rebates. And
14 there was a comment made earlier about how Staples has
15 done a good job of working through some of the consumer
16 experiences, and we've worked with them since 1999 in
17 partnership to really move that along quite quickly.
18 Staples easy rebates, which most people do know, is
19 really the culmination of those efforts, and is a
20 solution that works very, very easily. There is very
21 little information for the consumer to have to enter in.
22 And the key here is Staples makes sure it is very, very
23 clear on the rebate form the two pieces of information
24 that are required in order to claim that rebate: that
25 being the transaction number and the promotion code, both

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1 of which are printed on the receipt.

2 Moving to turn times. The faster that we can
3 pay the consumer the better the experience, no question
4 there. We have been working diligently with our clients
5 to bring that down, and we are now seeing in some cases
6 turn times from the postmark date to the date they have
7 the check in their hands as little as 21 days. So we've
8 made substantial improvement there. There are many
9 clients that are not there yet, that we continue to work
10 on, and some that simply won't be able to get all the way
11 down to 21 days, but that we can continue to make faster.

12 We have in the process removed several steps.
13 You see in the middle, Linda commented on we're doing the
14 nitty gritty, and in the middle you see some of that
15 nitty gritty detailed. And we have removed several steps
16 from 1999 till today, and automated those into the
17 technology in order to compress that time frame.

18 To give you an idea, in 1999 it was estimated
19 that the turn time as described, as I explained, was 12
20 to 16 weeks. In 2007 we now are best practices getting
21 down under 4 weeks, which could represent up to 75
22 percent decrease in that turn time. We actually find
23 with our clients right now across the board that north of
24 90 percent of valid claims the check is actually out the
25 door and in their hands in less than 6 weeks. So we're

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1 continually working to improve that, but it's coming down
2 substantially.

3 The third area is submission scanning. And
4 this is something that we've put in place here over the
5 last couple of years. And rather than simply keying in
6 the contents of the envelope and then bagging up the
7 paper, if you will, and storing it out into a warehouse,
8 we moved to scanning. This has allowed us to really
9 literally take the entire contents of the envelope, as
10 well as the outside of the envelope itself, create a
11 digital image of all of that information, and key in off
12 of the digital image. This actually has resulted in
13 several benefits. The integration with data entry
14 actually has yielded efficiencies, we're actually able to
15 key the information in much faster, as well as improved
16 accuracy. Rather than the data entry clerk looking down,
17 they're literally they have the scanned image and the
18 data entry screen side by side. And as a result we've
19 actually seen a nice increase in data entry accuracy.

20 The other area of benefit is in the call
21 center. The images are available to the customer
22 services representatives within that transaction. So
23 when a consumer calls the customer service representative
24 can pull that up on their screen and they're looking at
25 exactly what the consumer sent in. So while I'm not

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1 going to talk about consumer best practices, certainly a
2 consumer best practice that has been talked about a lot
3 is photocopy everything that you mail in. The beauty of
4 that is the consumer's now looking at the photocopy, the
5 customer service representative is looking at exactly
6 what was sent in, and we can resolve the issue, whether
7 it's that the consumer did not send something in and we
8 can discuss what they need to send in, or whether we, in
9 the case Sony just described, you know, perhaps the error
10 was not significant enough and we've been informed by our
11 client to pay the rebate claim.

12 Third, we've talked a lot about this today,
13 promotion design. And we've seen lots of examples, and
14 certainly this is a horrible one, and blends in all of
15 the instructions to the consumer as well as the terms and
16 conditions into one big mess of text. We need to
17 continue to improve on this. This is one example. This
18 also is a Staples rebate form. And the key here is that
19 the instructions are very, very clear. I know it's
20 small, and I apologize, because it's a long form. But
21 you can see the rebate begin date, end date, and postmark
22 date are clearly called out at the top. In the middle,
23 clearly called out the address where to send the rebate.
24 And at the bottom, the expectations, in this case four to
25 six weeks. And the ability to check the status of that

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1 claim online. You know, we still have to get the terms
2 and conditions in there, but if you were to read these,
3 and you'll have an opportunity to when the presentation
4 is made available, it's quite simple, it's quite
5 straightforward, there's not a lot of difficult language
6 in there. So that certainly has helped tremendously,
7 versus burying it deep inside some terms and conditions.

8 So those are the four areas I wanted to talk
9 about today. I, too, look forward to the question and
10 answer session. We are making strides. We've made a lot
11 of strides over the last eight years as an industry.
12 There are still things obviously we can do to make this
13 better. But just the fact that we're talking about it
14 now is great. And the application of technology through
15 a partnership between the clients and the processors is
16 really going to help us get there. So thank you very
17 much.

18 [Applause.]

19 MS. BADGER: Thanks, Mike. And that reminds me
20 of our admonition that mouse print is for rats, so avoid
21 it.

22 [Laughter.]

23 MS. BADGER: Our third panelist represents the
24 retailer's point of view, and often retailers catch the
25 heat for botched rebate programs even though they're just

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1 selling through products that carry a manufacturer's
2 rebate. Customer complaints are bad for business, and
3 costly as well.

4 Costco has a really intriguing before and after
5 saga of how it tamed the rebate beast. And here to tell
6 you the story is Joe Grachek, Vice-President and
7 Merchandise Accounting Controller for Costco Wholesale
8 Corporation.

9 Thanks, Joe.

10 [Applause.]

11 MR. GRACHEK: All right. Good afternoon,
12 everyone. I wanted to give you a little bit of a story
13 about Costco's journey through the mail-in rebate world
14 and how we've went down one pathway and ultimately by
15 doing what we thought was the best for members, best for
16 shareholders and our employees, and our suppliers, came
17 to some conclusions that we probably didn't think we were
18 going to come to.

19 So Costco's all about maximizing the value to
20 our members, our customers, and minimizing the cost of
21 the expense or the administration of doing business for
22 ourselves and for our suppliers. So that's the
23 fundamental principle that we begin this process with.

24 A few years ago Costco developed software and
25 systems with our fulfillment partner to be able to use a

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1 point of sale as the beginning of the rebate process. So
2 we began using essentially printing a rebate receipt with
3 each receipt at the warehouse. Many of you may have seen
4 those if you shop at Costco. Initially it was a mail-in
5 rebate program that was quite successful because it did
6 make it easier for our members to submit rebates, but
7 it's evolved into an electronic rebate program that has
8 really become popular and have been a fan favorite with
9 our members.

10 Essentially we worked with all of our
11 suppliers, and with few exceptions our suppliers have
12 joined us in this program where Costco has essentially
13 manages all the rebate programs independent, so we don't
14 have 200 supplier programs that are running through our
15 warehouse. We have rebate programs that run through our
16 warehouses to our members that Costco manages
17 unilaterally, with few exceptions. All rebates are set
18 up internally at Costco. The rebates are in the point of
19 sale system, and they are electronically transmitted to
20 our fulfillment partner who takes a submission from the
21 members, bumps it up against the database at the point of
22 sale, returns it to us for a validation process, and
23 ultimately is funded and remits to the members. So it's
24 a pretty quick and easy process.

25 One quick thing, the members this morning were

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1 talking a little bit about security of information. The
2 system we developed resides within the Costco system, and
3 so it has all the same internal controls as all our
4 financial systems, and other internal company controls.
5 So it's very secure information. Plus because we're
6 fortunate enough to have a membership base that we're
7 dealing with, the members really aren't required to put
8 anything that's not already known, basically name and
9 address, into the system, and that's just for the
10 remittance of the check. So when the member files for a
11 reimbursement or rebate it's fulfilled to the address
12 they select, but no additional information has to go into
13 the system.

14 From an internal administration perspective,
15 Costco sets up the rebate program, Costco runs it through
16 our buildings, Costco charges the suppliers the expense
17 for running that rebate program, and Costco is then
18 essentially in the control of assuring the highest levels
19 of fulfillment as well as operating the program and
20 efficiently as possible to reduce everyone's expenses.

21 Here's a copy of the rebate receipt that's
22 printed out on the membership, and I don't know how well
23 you can see it, but it's pretty similar to other point of
24 sale receipts that are printed out.

25 Our goal is to maximize the fulfillment, reduce

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1 the rejections, and I think we've been real successful at
2 doing this. So successful, I might add, that I think
3 that was -- that's kind of where I'm going with this
4 discussion is that our success in the level of
5 fulfillment has let us and our suppliers in a unified way
6 to say hey wait a second, there's a lot of inherent
7 administrative expenses to run mail-in rebate programs,
8 and maybe our administrative dollars are better spent
9 somewhere else. And so maybe there's other programs out
10 there that might be more beneficial to our customers,
11 members, and to ourselves than a mail-in rebate program.
12 And I think that's the interesting shift in the paradigm
13 is that the more efficient we become the more programs
14 are being changed to be more effective for everyone. So
15 that's the unintended benefit of higher levels of
16 fulfillment.

17 What we did, we started the program in 2000,
18 rolled out the U.S. and Canada by 2001, and then we went
19 online in 2003 with our program. What we require for the
20 Costco program is that it has to have significant value
21 if we're going to run a mail-in rebate. And that's
22 another thing that's maybe different for us and some
23 others is that we have to have at least 20 percent of the
24 product value as the value to our member, it has to be
25 real simple, it has to be membership based. The

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1 suppliers pay the set-up fee, the suppliers pay the
2 transaction fee to administrate the program. So we want
3 to make sure the suppliers are vested in the program
4 financially in order for them to run a program through
5 our systems.

6 Kind of our redemption rates as it stands
7 today. It's a confusing slide. But basically if you
8 look at \$5 rebates, in our automated system today we get
9 a return of about 40 percent redemption, and that's with
10 an easy online methodology, as well as the option to
11 mail-in, about 40 percent. \$25 rebates, about 48
12 percent. \$100 rebates, right around 80 percent. So
13 there's still a number of consumers that don't utilize
14 the process even though it has become simple and easy to
15 do.

16 We'll just see the higher redemption rates, the
17 higher dollars. When members are paid the check goes to
18 the member, and they can go cash it however they want,
19 but they can also cash it at Costco. One thing that was
20 integral to this program was making it fair to the
21 members and easy on them, so if the check becomes stale-
22 dated we'll still cash the check, if a member's rebate,
23 for whatever reason, they don't process the rebate but
24 they had a valid rebate even after the system is -- or
25 even after the window of redemption is closed but the

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1 supplier will still honor that rebate.

2 So we encourage our members to get the full
3 value, and we're willing to eat some of that cost to make
4 sure the members do get the value on top of the
5 supplier's fulfillment requirements.

6 Now, if you see here, if you look at the bars
7 you can see the number of redemptions over the last five
8 years. The programs themselves have actually
9 significantly declined. We had about six million rebate
10 redemptions in fiscal '02, down to under two million
11 redemptions in fiscal '06. And the reason for that is
12 because, as I said earlier, suppliers and our merchants
13 are realizing there's better ways to spend their
14 administrative expense than on mail-in rebate programs.
15 In the U.S. the average check amount is about \$15.10, if
16 you look at all the rebates redeemed.

17 The other thing that members can do on our
18 system is -- just I'm sure that most of our retail
19 competitors are doing this online do about the same
20 thing -- they can see, they can actually go in and see
21 all the rebates that exist at the Costco they shop at.
22 They can also see the status of their rebate, which I
23 didn't show you here. They can see the status of their
24 rebate, they can see the history of their rebate
25 redemptions, and they can see all the rebates that exist

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1 where they shop. Also, we do make sure that even on the
2 receipt that you get at the register, plus on our
3 website, if you're not satisfied with the electronic
4 submission, if you do want to make a phone call, we do
5 have members who still prefer to make phone calls and we
6 give them that opportunity. So and we have a call center
7 in our offices. Our fulfillment partner also has a call
8 center. And within those call centers, just so you know,
9 is a focus for us just to make sure we have excellent
10 service to our members, and so we have a real time
11 monitoring process that we can utilize from our
12 administrative offices to administrate or to monitor the
13 administration of the phone calls within our third party
14 provider, as well as internally at Costco. So we make
15 sure that the members are getting the right service from
16 on the phone lines too, even though that's not the
17 preferred methodology.

18 Here's just a snapshot of what the site looks
19 like when they're looking at rebates. You can look at
20 this when you get the presentation, I guess.

21 Here's all the rebates that are listed in the
22 system for a warehouse that a member shops at.

23 We'll always reissue rebate checks if they're
24 lost. Full customer service is a big important thing for
25 us.

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1 Let's see, I guess the biggest thing for us is
2 someone mentioned earlier today if the members have a bad
3 experience with a rebate program that might influence
4 their decision to purchase in the future. And I think we
5 take that really seriously at Costco. It's a big deal to
6 us. We don't want to offer any program that our members
7 can't be thrilled with, and that we can't support at the
8 highest level. So we feel like we've been able to do
9 that through our fulfillment partner and our internal
10 systems that we've developed, but also we're finding that
11 when you do it the right way there's just a chance there
12 might be a better way to spend those dollars between you
13 and your supplier partners.

14 And so stay tuned on that, and we'll see what
15 rebates go in the future. Thank you.

16 [Applause.]

17 MS. BADGER: Thanks, Joe. And just for all of
18 you that need some dessert after lunch we have some
19 cookies on the side here where the coffee was, and those
20 cookies were purchased from Costco.

21 [Laughter.]

22 MS. BADGER: So, thanks, Joe, on both accounts.

23 Finally, we're very pleased to welcome
24 Ms. Linda Goldstein. Ms. Goldstein serves as the Vice-
25 President of Government and Legal Affairs for the

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1 Promotion Marketing Association, and is also a partner
2 with the law firm of Manatt, Phelps, and Phillips. And
3 in her remarks Ms. Goldstein will unveil for the first
4 time, your moderator hasn't even seen them yet, the PMA's
5 new guidelines for rebate promotions.

6 So welcome and many thanks for speaking with us
7 today.

8 [Applause.]

9 MS. GOLDSTEIN: Thank you. And we're delighted
10 to be here on behalf of the Promotion Marketing
11 Association. Every one of these events where we can get
12 industry and government together to talk about the issues
13 and collaborate on solutions, I think we have a wealth of
14 experience in learning that it tends to solve the problem
15 efficiently with everybody's interest in mind. So we're
16 glad to be here participating at yet another stellar
17 event.

18 Actually, let me just begin. I am here today
19 representing the Promotion Marketing Association. And
20 let me just tell you a little bit about who we are,
21 because I think that will help explain some of the
22 perspective that we took in defining best practices. We
23 are the leading trade association representing the
24 promotion marketing industry. Our members are quite
25 diverse. We have a lot of package goods companies,

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1 retailers, online marketers. But in addition to the
2 marketing segment of the community we also have promotion
3 agencies, fulfillment companies, and so really companies
4 that touch the rebate process from different sectors come
5 into play in our association. And so that forces, as
6 you'll see, some of what we're trying to identify to be a
7 little bit more general than the individualized specific
8 programs that you've heard about thus far.

9 We're not new as an association to trying to
10 deal with rebate issues. Actually for a very long time
11 there's been a joint initiative between the PMA and the
12 United States Postal Inspection Service, a rebate fraud
13 data center whose objective was to detect, deter, and
14 prevent rebate fraud, and actually they maintained a
15 database of people who through a variety of parameters
16 that were established were suspected of or were
17 determined to have committed some kind of a rebate fraud.
18 These people were identified and asked to sign voluntary
19 assurances of discontinuance. And it's a quite effective
20 program in combating consumer fraud.

21 And I think the point for us that we want to
22 stress there is that consumer protection is an important
23 objective in determining best practices, but also
24 permitting policies and procedures that are designed to
25 deter consumer fraud is also an issue, and rebate fraud

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1 is a problem, a real problem for businesses.

2 So, as I said, some of our key learning points,
3 just from that experience were that rebate fraud is real,
4 that businesses can be victims too, and that ultimately
5 consumer protection needs need to be properly balanced
6 against the need to prevent customer fraud or fraud on
7 the businesses.

8 In thinking about how to approach the best
9 practices we took some considerations both from the
10 marketer's side and from the consumer's side. We believe
11 that rebates are a valuable promotional vehicle that
12 benefits both marketers and consumers. For consumers
13 there's a high perceived value, it's a genuine savings,
14 and I think as you heard this morning, if the experience
15 is good it's likely to stimulate future purchases.

16 For businesses, it's a highly effective
17 marketing tool. I've put some numbers up here just to
18 show the magnitude of rebates that are issued each year.
19 I'm going to caveat it by saying these are unaudited
20 figures, and really just designed to be illustrative
21 rather than to be quoted.

22 I think the key issues for consumers, and what
23 we've heard from our members where problems occur, are if
24 the terms of the rebate offer are unclear or ambiguous,
25 if the advertising fails to disclose material terms and

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1 conditions, as well as the other forms that the consumer
2 gets once they've made the purchase and are in the
3 process of trying to claim their rebate. There have been
4 numerous problems with advertising of pricing being
5 misleading, and consumers not really understanding
6 exactly what it is that they're going to have to do when
7 they go to the checkout counter and dip into their
8 pocket.

9 Contingent rebates are becoming increasingly
10 popular, particularly in certain industry segments, so
11 the need to disclose those contingencies we think is very
12 important.

13 From an operational standpoint, problems can
14 arise if the window for purchases is too short, or the
15 time period for redemption is too short, if the claim
16 procedures are too onerous, or the rebates are not issued
17 on a timely basis. And I think that that all confirms
18 very much what you've heard this morning.

19 Some of the issues that businesses are facing,
20 that our members are facing, we're troubled by
21 inconsistent state regulation. There are, particularly
22 in the area of advertising, there are on the books now
23 state statutes that are inconsistent, and if you're
24 trying to do a national promotion that can be quite
25 challenging in terms of developing your advertising copy.

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1 And I think it's also important as we get into this
2 process to recognize that a one size fits all approach
3 doesn't work. I think the panel, this afternoon's panel
4 demonstrates it in and of itself that different
5 businesses, depending on their size, depending on the
6 nature of the products or services that they're offering
7 on their demographics, may have different approaches.
8 Online certainly is an efficient way, but for some people
9 that may not be an effective way for them.

10 So I think, again, we just looked at this from
11 the standpoint of standardized language, standardized
12 mechanical or operational procedures, could be
13 problematic for all businesses concerned. And I think we
14 also have to recognize that rebate practices are
15 evolving, and as technology changes practices change to
16 accommodate that. And so any regulation, legislation, or
17 even best practices has to be sufficiently fluid to
18 accommodate those evolving practices.

19 And we do need some conditions and restrictions
20 to protect against consumer fraud, but those have to be
21 balanced against the need to provide for appropriate
22 consumer protection.

23 We are concerned, there has been a marked
24 increase in legislative trends, rebate bills that have
25 been proposed, many have not passed, but they continue to

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1 come and they continue to become more restrictive. And
2 from a business standpoint our concern is if as we've
3 seen in other areas, like gift cards or sweepstakes, we
4 end up with inconsistent state regulations, what that
5 will likely mean is that marketers will offer these
6 programs less frequently. And for consumers that's not a
7 positive output.

8 And so we really hope that maybe today is the
9 start of a process to see just how far self-regulation
10 can go if different parts of the industry come together
11 to develop best practices. And I really feel the need to
12 say that what we're going to share with you today is just
13 one group's point of view. And I think there are lots of
14 different perspectives that will have to weigh in before
15 we can finally get a complete picture.

16 So in developing these practices, which I also
17 want to say continue to be a work in progress in part
18 because we really wanted to hear a lot of what was
19 discussed today and take that back to our members and see
20 how we might improve on what we're thinking thus far, but
21 we've focused on three aspects of the rebate offer: the
22 structure of the offer; the communication of the offer;
23 and the fulfillment of the offer.

24 There are some general overriding principles,
25 they sound logical and intuitive, but I think they're

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1 worth repeating. Three primary principles that rebate
2 offers should be conducted in compliance with applicable
3 laws and regulations, which we hope will be few and
4 reasonable. That they should be designed in a manner to
5 provide meaningful value to consumers. We're not going
6 to specify a specific amount, but it should be a real
7 value, they should not be illusory. And they should be
8 conducted in a manner that deals with the consumer
9 honestly and treats the consumer fairly.

10 In terms of the structure of the offer, the
11 requirements should be reasonable and easy to follow.
12 They should not be unduly onerous. And whatever terms
13 and conditions are put on should have a rational business
14 purpose, they should not be in there simply for the
15 purpose of encouraging breakage or encouraging slippage.
16 But if they can relate back to a rational business that
17 the particular company has, we think it's appropriate for
18 them to be included, and that will obviously vary by
19 marketer.

20 Marketers should allow for a reasonable period
21 of time between the purchase date and the submission
22 deadline. We think that will address the short window
23 period that consumers have expressed. And they should be
24 designed to prevent fraudulent claims in a reasonable
25 manner. In other words, again, whatever conditions are

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1 imposed, or limitations, no duplicate copies, or things
2 like that, have a reason or a basis to prevent fraud,
3 those should be acceptable. But the idea of preventing
4 fraud shouldn't be used as a basis to impose unreasonable
5 conditions.

6 In terms of communicating the offer, and I
7 think here is where we really need to have some
8 flexibility, and we intentionally have not specified
9 manner, time, or placement of disclosures, because it
10 will vary. Some of the disclosures will be very material
11 to the purchase decision. Other disclosures are very
12 important once the consumer needs to go through the
13 process of claiming the rebate, and that should dictate
14 where and how those disclosures are made. But as a
15 general rule, marketers should ensure that all relevant
16 information about the rebate offer is communicated at the
17 appropriate time. And, again, as I say, that can vary.

18 The terms of the rebate offer should be
19 presented in language that's clear, that's unambiguous,
20 and easy for the consumer to understand and follow.

21 We do think that there are certain material
22 terms and conditions of the offer that should be
23 disclosed in all instances. And those would include the
24 time; the identity of the product or products, in other
25 words, to be specific about which one, which products or

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1 within a line the rebates apply to, to help reduce
2 consumer error; the date by which the request has to be
3 postmarked and/or received, and that should be indicated,
4 whether it's a postmark or receipt date; date by which
5 the product must be purchased; obviously the amount of
6 the rebate; the manner in which the rebate will be
7 provided. In particular we're seeing a growing trend
8 towards providing rebates through other forums like gift
9 cards or store value cards, or the like, and if it's
10 going to be something other than a check the consumer
11 should be told about it up front. And if it is something
12 like a gift card or a store value card, any material
13 limitations on the use of that should also be disclosed.

14 If the time for delivering the rebate, we use
15 the mail order rule as a model here, is longer than 30
16 days, we think that should be disclosed, and details
17 about who to contact with questions. The offer terms
18 should advise the consumer if there are any additional
19 purchases that they have to make, or any additional costs
20 that they're required to incur, any additional
21 conditions, any geographical limitations, any limits on
22 the number of rebates: one per household, one per
23 purchase, one per email address. Obviously the specific
24 procedures that have to be followed. A very clear
25 description of exactly what items the customer has to

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1 provide in order to claim their rebate. And any material
2 exclusions, limitations, or restrictions.

3 Two principles we wanted to highlight outside
4 of the general requirements for clear and conspicuous
5 disclosure of material terms, is to really focus on not
6 misrepresenting the out of pocket cost to the consumer.
7 So if the law permits we think it's a best practice to
8 disclose both the pre-rebate price and a post-rebate
9 price so that the consumer knows exactly what each
10 element of the transaction is. And if the receipt of the
11 rebate is contingent on the consumer fulfilling certain
12 requirements, for example, if it's a rebate on a computer
13 but you've got to be a member of an online service for a
14 certain period of time, that should really be highlighted
15 prominently in the advertising, because that may be a
16 material inducement to the purchase.

17 On the fulfillment side, obviously the rebate
18 offer should be fulfilled in accordance with the offer
19 terms and conditions. They should be honored within the
20 time period specified, which should be of a reasonable
21 nature. They should be delivered to consumers in a
22 manner that we can reasonably expect that the consumer
23 will receive the rebate. So in some manner that's not
24 likely to be perceived as junk mail by the consumer, but
25 something that would indicate to the consumer that the

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1 contents of that envelope are important and that it would
2 be worth the consumer's while to open them.

3 If the marketer will be relying on a third
4 party to handle the fulfillment, again, we don't think
5 it's our role to set forth specific requirements for
6 third party fulfillment, but we do believe that our
7 members should conduct some due diligence on the third
8 party to ensure that they have the financial resources
9 and the personnel necessary to meet anticipated demands.
10 And that there should be a formal contract with the third
11 party that sets out the expectations of both parties and
12 what the respective obligations of both parties would be.

13 We think that the marketers need to work with
14 their third party fulfillment companies to make sure that
15 when there's an expected surge of consumer requests or
16 interest in the rebate that that third party fulfillment
17 company knows. So often some of the problems occur
18 because there's a lack of proper communication between
19 the marketer and the fulfillment company. They don't
20 know what the media schedules are and they don't
21 necessarily know when to expect that that surge will hit
22 to make sure they have appropriate forms and personnel
23 necessary to handle that.

24 And the marketers also need to work with their
25 retailers to make sure that they have proper inventory on

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1 hand to meet those anticipated surges.

2 The marketers, or their third party fulfillment
3 company should have reasonable processes and procedures
4 in place to detect rebate fraud. We've learned through
5 the experience from the rebate data fraud center
6 experience that there are some indicators that you can
7 give to your third party fulfillment company that can be
8 early warning signs that there might be some fraud
9 occurring.

10 The marketers should maintain clear records of
11 the transaction. Consumers should be provided with
12 reasonable cost-free method of making inquiries about
13 their rebate, so there should be a cost-free customer
14 service system in place with appropriate hold times and
15 appropriate personnel to handle the inquiries in a timely
16 manner.

17 And we think it's important to remember the
18 privacy component, the data that's collected from
19 consumers in connection with rebate offers should be used
20 in accordance with the marketer's stated policies and
21 applicable laws and regulations.

22 So those are our thoughts as of this moment.
23 We welcome everyone's comments here and we will continue
24 to keep you posted as we work these through. Thank you.

25 [Applause.]

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1 MS. BADGER: After hearing from all of our
2 panelists on best practices, I think that we can sum it
3 up in one word, and that's CARE. And I came up with a
4 mnemonic because I basically can't help myself. C, be
5 consumer friendly, make sure to keep the terms and
6 conditions simple, something that consumers can follow,
7 and communicate clearly with your consumer. A, be
8 attentive, look for signs that problems are starting and
9 nip them in the bud. R, be responsible, and we saw that
10 from our manufacturer and retailer panelists today. Take
11 responsibility for all the facets of rebate fulfillment,
12 don't just pass the buck, or rebate promotion. And E,
13 where possible use electronic submissions, they're really
14 great for consumers, speed up the process, keep them
15 informed, and it seems to cut back on the costs of rebate
16 promotions as well.

17 So with that, I want to thank the panel as I've
18 learned a lot today, and I know that everyone in the
19 audience has. And thanks for your great presentations.

20 [Applause.]

21 MS. BADGER: And we have a lot of questions.
22 And we have several questions that focus on what happens
23 when the rebate check is not cashed by the consumers. So
24 perhaps Mike Reynolds from Parago could start first and
25 tell us what the policy is from the rebate processor's

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1 viewpoint.

2 MR. REYNOLDS: Well, I can certainly give you
3 our process around that. The rebate checks that go out
4 and are not cashed, first of all, there's two methods
5 here in terms of receiving the funds and distributing
6 those funds on checks. One is that we invoice our
7 clients and they wire the money to us and then the checks
8 are cut. The second is that the client in some cases has
9 their own bank account and we write the checks off of
10 their bank account.

11 In the case where it is being written off the
12 Parago bank account then those funds, one of two things
13 happens with those funds: one, they're returned back to
14 the client; or two, in the case where they have elected
15 to ask us to file that as unclaimed property with the
16 appropriate states we provide that service to them. So
17 it just depends on the client's situation, the clients
18 sometimes take it upon themselves to handle the unclaimed
19 property, and sometimes they ask us to do that.

20 MS. BADGER: Okay.

21 MS. GOLDSTEIN: I just wanted to add that on
22 that issue is becoming an increasingly significant one on
23 the state level. And state interests in escheating that
24 property have escalated in the last several years. So
25 all marketers that have any significant rebate program

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1 really need to have in place a parallel program for how
2 that property will be handled for escheatment purposes.
3 And it's no longer a situation where that can be a
4 windfall to the marketer if those checks are uncashed.
5 In fact, it can create greater headaches and greater
6 potential liability for the marketers.

7 MS. BADGER: Okay. The next question again for
8 Mike I think is how can a manufacturer like Staples, one
9 of your clients, gain access to your reports on
10 redemptions and submissions and so forth?

11 MR. REYNOLDS: How can Staples get it?

12 MS. BADGER: Staples, one of your clients.

13 MR. REYNOLDS: How do they get the data?

14 MS. BADGER: Right.

15 MR. REYNOLDS: Not the manufacturers but
16 Staples themselves?

17 MS. BADGER: It says, 'How can a manufacturer
18 gain access to Parago's reports for redemptions,
19 submissions, etcetera?'

20 MR. REYNOLDS: Sure. We provide reporting,
21 extensive reporting back to our clients on a weekly
22 basis. So if the client is Staples then the reporting
23 goes back to Staples. In some cases the manufacturer who
24 may be sponsoring that rebate promotion through Staples
25 wants to get the data as well, and basically that's just

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1 in cooperation with Staples. If our contract is directly
2 with Staples it's their data, it's not ours, we don't
3 have the ability to do anything with that without their
4 permission. So typically what will happen is the
5 manufacturer will work with Staples, and if that approval
6 is given then we're more than happy to provide all of the
7 data to the appropriate manufacturer. And our reporting
8 system is designed in such a way that it's very easy to
9 split out the reports by manufacturers.

10 MS. BADGER: Okay. And I'll throw this out to
11 anyone who wants to answer it. One of our audience
12 members wants to know, could you describe and/or give
13 examples of what a contingent rebate is?

14 Linda?

15 MS. GOLDSTEIN: Well, there are many examples,
16 but I think the one that is most common is you purchase
17 product and that product may be linked to a service. So
18 an example might be purchasing a phone and signing up for
19 wireless service and the rebate you only become eligible
20 for the rebate if you've remained a subscription member
21 of that service for a certain number of months. So that
22 the rebate -- the purchase itself is not qualifying you
23 for the rebate, there's some additional obligation that
24 has to be satisfied that won't occur until some point in
25 the future.

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1 MS. BADGER: Okay. And another audience member
2 would like to know whether rebate checks are subject to
3 the mail order rule, the FTC has a mail order rule, and
4 it provides that if you're going to send something late
5 you have to give notice, and also after a while you have
6 to give an opportunity to cancel. It does not --
7 although it could apply to or does apply to merchandise
8 premiums.

9 So if it's a product, then it applies. But if
10 it's cash, it doesn't.

11 And the second part of the question is what
12 should a manufacturer do when it's not making the stated
13 time period for mailing the rebate checks? And here the
14 admonition is don't put down something that you can't
15 meet. If you really can't meet the eight to ten weeks
16 then don't make the claim, and certainly don't continue
17 to make the claim if you find out that there's going to
18 be major delays or problems in meeting your promise. And
19 if something happens then use every reasonable effort
20 that you can to notify consumers of what kind of delay
21 they're looking at.

22 The next question is one for Mike Reynolds of
23 Parago. And it says, 'Some fulfillment houses outsource
24 data entry to data entry companies and use contracted
25 home workers to enter data, and how does Parago control

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1 that type of environment for accuracy and shrinkage of
2 lost materials?'

3 MR. REYNOLDS: That's a great question. At
4 Parago we have never used home workers. And largely the
5 industry has moved away from that practice. We have
6 never had that. We do use some outsource partners for
7 parts of the process. And those partners must meet
8 specific guidelines in order to work with us, including
9 things that would fall into the integrity camp, we do
10 substantial checks on them before they're ever allowed to
11 have any part of the rebate process.

12 But to the second part of the question, the key
13 here is two things: one, the outsource partner must be
14 keying directly into our transaction processing platform.
15 They cannot key into their own technology and then send
16 us a file, for instance. So it must be keyed directly
17 in, and therefore we are able to control that experience,
18 and control the accuracy of in this case the data entry
19 component of that. And then, two, we actually have
20 substantial measurements in metrics that we use for our
21 outsource partners on a monthly basis. And where they
22 may be under our service level requirements, then quite
23 frankly they are released as a partner and we no longer
24 work with them.

25 So we have some very, very stringent guidelines

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1 in place. And the use of those partners has helped
2 tremendously in terms of the speed and efficiency that
3 I've talked to, as well as a comment that Linda made in
4 terms of the seasonality of the business, and the peaks
5 and valleys, if you will, in terms of the volume. It
6 allows us to ramp up very quickly to accommodate the peak
7 seasons and the peak volume that comes as a result.

8 MS. BADGER: Thank you for that. The other
9 question we have is I think for Costco, and it says,
10 'Have you eliminated mail-in rebates totally?'

11 MR. GRACHEK: We still have a small percentage
12 of the actual mail-in. It's eligible for everyone to
13 mail in just because there could be and there are members
14 that prefer that method of submitting. So the lion's
15 share of all of our submissions are online, but we will
16 still offer that to members because there's always a few
17 members that prefer to do it that way. So it's member's
18 preference over anything else.

19 MS. BADGER: And I think the second part of
20 that question is, 'Do most of your manufacturers give
21 equal rebates given your new procedures, or have they
22 decreased the value of the rebates offered?'

23 MR. GRACHEK: I think that what happens is as
24 you evaluate the system you look at the cost of the
25 transaction, the cost of administration, and the

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1 redemption amount. A lot of times our merchants and our
2 manufacturers will sit down together and say how can we
3 spend these dollars more effectively. And what Costco is
4 kind of morphing into a little bit now, and it's not a
5 direct transition, but what I see is a lot more instant
6 rebates at the register because, number one, it's an
7 instantaneous gratification for the customer; two, the
8 data is available right away so you're not waiting for an
9 outcome; and three, it's significantly less expensive to
10 administrate for us and for our partners.

11 So if you go to Costco nowadays you're going to
12 see coupon books and all that crazy junk out there, and
13 you're going to see instant rebates noted on the signs,
14 what the discussion was earlier today you'll see it
15 netted on the signs because they're going to get it at
16 the register. The register will show that rebate piece
17 in the details so they know they got that as a rebate.

18 But I think the trend's going towards offering
19 the instant rebate and reducing the number of mail-in
20 programs in general.

21 MS. BADGER: Finally, and if I've butchered
22 your questions you're going to have an opportunity to
23 restate them in the next panel. But one consumer brought
24 up the sticky problem of manufacturers or retailers
25 requiring the original receipt, and the fact that then

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1 down the process somebody can say well we lost your
2 submission, your rebate submission, and of course now you
3 don't have your original receipts so you're rejected.
4 And I was wondering if anyone on the panel has some ideas
5 about that.

6 Joe?

7 MR. GRACHEK: Well, I just think that that's
8 old school. And that was, you know, there was a fraud
9 prevention concern with original data way back when.
10 There's lots of consumer fraud especially in the low
11 dollar rebates. We had people who understood the rules,
12 they knew what levels of review were going on, and so you
13 see lots of fraud if you didn't require original
14 documentation.

15 Our strategy isn't to press the original
16 documentation, and we're fortunate because we're a
17 membership club, but now we just look at the system. I
18 can tell what a member purchased and returned. And so we
19 do fulfill the rebate on the original purchase, and then
20 we have flags in our system and fraud detection routines
21 that can tell if there was excessive amount of purchases,
22 and then they tie in returns to those purchases, see if
23 the rebates were fulfilled, and then go back to the
24 member, or in some cases employee, who felt they saw a
25 hole in the system and wanted to perpetrate a fraud.

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1 So original information isn't nearly as
2 important as it used to be because the system data allows
3 us to do a much better job of protecting our dollars than
4 the old manual way of asking for original data.

5 MS. BADGER: Isn't the retailer really in a
6 very good position to use electronic rebate programs,
7 because they have access to the data from consumers?

8 MR. GRACHEK: Well, I mean we're in a unique
9 position because we're a membership club, and that makes
10 it easier for us. I'm sure grocery would have another
11 story to tell, or non-membership entities. But you can
12 still tie your exposure to your purchases or to your
13 sales to your customers, and you can tie it by location,
14 by date, by name in some cases because there's warranty
15 and everything else that has to go through it.

16 So I think for bigger dollar purchases with
17 bigger rebates, even the non-member retailers have
18 customer data that I think is helpful. So it's just kind
19 of the focus from the retailer. You're right, the
20 retailer has to focus on this because the manufacturer in
21 most cases doesn't have the ability to focus on it.

22 MR. REYNOLDS: Can I just add two pieces there?
23 One, is that we have seen over the last few years many
24 retailers taking a best practice, that being that they
25 actually print out at the point of sale a specific rebate

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1 receipt. Therefore, the original receipt, purchase
2 receipt, is still in the hands of the consumer, and the
3 rebate receipt is used for submission on the rebate.
4 That's point number one.

5 Point number two to your follow-up question,
6 Linda, is absolutely the beauty of the retailer is that
7 they've got the transaction data, and within that
8 transaction data it includes the purchased products and
9 their SKUs. So that is the best validation source by
10 far, and moving more to electronic submission is just a
11 logical approach. The difficulty is really for
12 manufacturers selling through a lot of different retail
13 channels, and that's much more difficult, because that
14 data is not readily available.

15 MS. BADGER: Okay. Well, we're out of time for
16 this panel. We'll have a 15 minute break. Come back at
17 3:30. I want to thank our panel once again for a
18 wonderful presentation.

19 [Applause.]

20 [BREAK]

21

22 **PANEL 5: THE REBATE DEBATE: LEGISLATE,**
23 **LITIGATE OR LOSE REBATES?**

24 MS. FAIR: Thank you for taking your seats so
25 we can start our last panel of the day. I'm Lesley Fair,

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1 I'm an attorney with the Bureau of Consumer Protection in
2 Washington. And is there a better place for me to be on
3 business for a couple of days than with my brothers and
4 sisters with the West Coast Regional Office of the FTC.

5 I'm also honored to be joined by some real big
6 names in this area. We've basically been tasked with one
7 of two things. The first thing we've been told to do is
8 either, here is our choice, come up with a solution to
9 the rebate questions addressed all day. Or number two, I
10 think it was figure out how Sanjay stayed so long on
11 American Idol.

12 [Laughter.]

13 MS. FAIR: So we've decided to take the easier
14 task, and these three panelists will be discussing
15 potential solutions today.

16 I am honored first to my right is Norma Garcia,
17 a Senior Staff Attorney with the West Coast Regional
18 Office of Consumer's Union, the nonprofit publisher of
19 Consumer Reports magazine. In the house I grew up in,
20 second I guess to either Dear Abby or Holy Scripture, was
21 Consumer Reports magazine. I think sometimes my mother
22 thinks I work for Consumer Reports magazine. So let's
23 keep that fiction. But it's a group for whom we at the
24 FTC have the greatest amount of respect, and we're
25 thrilled that Norma Garcia is here today.

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1 Next to Norma is Ed Kabak, who is the Chief
2 Legal Executive for the Promotion Marketing Association
3 based in New York. Before he took that position he had
4 extensive legal background in the advertising marketing
5 and promotion area. Ed is also a published author, a
6 book collector, and sort of a well-known raconteur, so
7 we're looking forward to the comments that he has today.

8 Finally, at the end of the row, Jeff Greenbaum,
9 a partner in the New York law firm of Frankfurt Kunitz
10 Klein & Selz. Jeff is the former chair of the Consumer
11 Affairs Committee of the New York City Bar. He's also a
12 member of the Promotion Marketing Association's
13 Government and Legal Affairs Committee. He also, to be
14 frank, has one of the most facile and interesting minds
15 of any attorney I know, which means that both it's always
16 interesting and stimulating to talk to him, and also by
17 the end of the conversation I feel like I'm back in the
18 middle of a law school exam. So we have a lot to look
19 forward to from these three great panelists.

20 I want to call your attention to the little
21 form, the results of our -- the questions that were asked
22 today. But before I do that, I really want to share one
23 form with you that I really thought had some amazing,
24 amazing results. Let me just read it to you briefly. It
25 said the top three problems, this person said the top

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1 four problems, sorry, we're not doing that, but what we
2 do know is according to our very unscientific study, what
3 a shock, I'm not suggesting that there might be a little
4 bit of home team bias here, but the number one problem,
5 according to the attendees today, was drum roll please,
6 consumer error. Second, drum roll, consumer rebate
7 fraud. And then we had a tie about for third, complex
8 and confusing offers, delays in processing, and the
9 problems with inconsistent industry standards with a need
10 for industry standards. As I said, were we to have a
11 hundred consumers or a hundred law enforcement officers,
12 a hundred other people in the audience, perhaps we might
13 get a slightly different response. But certainly this
14 lets us know a little bit about where folks are coming
15 from.

16 So let me start with just that question. I am
17 not Miss Cleo, we've already sued her, but something
18 tells me when I ask Norma Garcia if she -- if her top
19 three were the same as those top three, I don't think I'm
20 going out too far on a limb, to suggest she might have
21 some slightly different perspectives. Norma, what were
22 your -- how do you perceive these top three?

23 MS. GARCIA: Well, I'm happy to say you're not
24 on the limb alone. We certainly see these as concerns
25 that would naturally arise in the context of individuals

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1 who deal with this issue. But from the consumer
2 perspective we have a slightly different take on it, and
3 that is that we think that consumers really need to be
4 able to get rebates easily, that there's too much
5 difficulty involved in the process. And the obstacles
6 that are in the way of consumers ultimately receiving
7 those rebate checks for us is the number one problem.

8 Our second problem is we think that there are
9 serious privacy considerations that are not being
10 addressed in the consumer rebate process. And that is
11 something obviously that hasn't been identified by this
12 room as a top priority, but it is a top priority for us.

13 We also think that in terms of one of the best
14 practices that is out there for consumers being able to
15 receive the benefit of the rebate that they're offered,
16 is the process that was described by the gentleman from
17 Costco, where consumers can actually get the rebate at
18 the cash register. We think that's number one, everyone
19 should be doing that. So for us, best practices is also
20 on the top of the list.

21 MS. FAIR: Ed, how about you?

22 MR. KABAK: Well, I actually come fairly close
23 to the list you gave. In terms of getting the rebate at
24 the cash register, I think that's difficult for a lot of
25 reasons. One is it's necessary to detect consumer fraud,

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1 but secondly, and again particularly coming from an era
2 in which paper is now to some extent replaced by
3 electronics, it takes a couple weeks basically to turn
4 around in a rebate processing to the extent you have to
5 batch process it, you've got to validate and verify
6 unusual problems, and then start printing and mailing the
7 drafts of the rebate checks in whatever form they exist.
8 And I think we heard from the last panel that basically
9 the process of clearing rebates has gone down to like 21
10 days or so from an even greater amount, and that's an
11 achievement.

12 So it's very difficult to do that, and having
13 rebates made available at the cash register I think
14 unfortunately would basically encourage additional
15 consumer fraud, which is an incremental problem as well.
16 But I do think that is a solution that doesn't really
17 help anyone in the industry. But what certainly should
18 take place is clear and concise offers, and much in line
19 with our suggested policies and with sufficiently clear
20 disclosure we are certainly opposed to people hiding the
21 ball as was made evident in Dean Graybill's presentation.
22 PMA is a trade association that really wants to be
23 associated with honest and ethical practices and pretty
24 much straight shooting all the way.

25 MS. FAIR: What about you, Jeff? Any reaction

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1 to these top three?

2 MR. GREENBAUM: Well, I think that, and who
3 knows whether this falls in the top three or not, but the
4 advice that I give to clients is that, and I think it's a
5 critical thing that really has to come out of this day,
6 which just as an aside I'm so happy to be a part of this,
7 this is really one of the most incredible days in terms
8 of just the depth of the content, I mean the really
9 unbelievable way we've covered this material, and I just
10 really want to compliment you guys, because I feel like
11 all I do is go to conferences on advertising and this is
12 just, you know, one of the only ones that I've ever
13 haven't left the room for two hours to make phone calls.
14 So I really want to compliment you.

15 MS. FAIR: I'm a little concerned, because I'm
16 often speaking at those conferences, Jeff.

17 [Laughter.]

18 MR. GREENBAUM: I would never, I would never
19 leave the room for Lesley.

20 What I would want to say is I think the
21 critical issue here is training. And it's training
22 marketing people. In-house lawyers and outside lawyers
23 when they're faced with these issues, if they're faced
24 with a draft of a TV script or a produced TV commercial,
25 or a draft of a print ad, or a program that's already

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1 been developed and out there and now we're trying to
2 figure out how to advertise this thing. And if the
3 lawyers are getting involved in the process at this point
4 it's just way too late. We see all those disclosures
5 thrown up there on the screen and you go lawyers are
6 faced with programs that they're just not able to
7 advertise. So I think that one of the things that
8 lawyers really need to do is get with the marketing
9 people before these programs are developed and sort of
10 talk through, well if you're going to do this program
11 let's talk about what it's going to mean in terms of how
12 are we going to inform consumers in a clear and
13 understandable way how this program is going to work. If
14 you run a print ad with seven different rebate offers
15 with bundling eleven different products that involve
16 service credits and mail-in rebates, and in store instant
17 rebates in some circumstances, you're never going to be
18 able to advertise that thing properly.

19 So I think that one of the big messages here is
20 that in order to get something clear you're going to have
21 to start early on in the process. And if you teach the
22 marketing people, you know, what are the limits of what
23 you can advertise in a clear way, it's going to solve a
24 lot of these other problems.

25 MS. FAIR: Let's talk about when we look at

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1 every step of the way, let's talk first about consumer
2 education. Regardless of whether this is an accurate
3 reflection, I think we would all agree that it's just
4 good policy, it's good business, to do whatever can be
5 done to educate consumers. I think Marcy Sims already
6 took the an educated consumer is our best customer, I
7 would have preferred that for an FTC slogan, but they've
8 already got that.

9 How do we educate consumers? Assuming that
10 that's at least part of the issue here, what are the
11 effective ways do you think, and let me start with you,
12 Norma, to educate consumers?

13 MS. GARCIA: We think it's very important for
14 consumers to be educated, but they need to be educated
15 about something that really works. If we're talking
16 about educating consumers about a process that's too
17 complex or too cumbersome, then what's the point. In the
18 first place, we have to have a process that works for
19 consumers. Ultimately the consumer is your customer.
20 When consumers are unhappy you're going to be unhappy.
21 It's going to impact your bottom line. So I agree with
22 Jeff. When it comes to making sure that the people who
23 are responsible for getting the message out there have
24 the advice that they need on the front end to do it
25 effectively and to do it within the confines of the law.

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1 Obviously to the extent that you can educate
2 your consumers at the very beginning of the process of
3 what's involved in a particular rebate process, assuming
4 this is a sound process, and not a flawed one, that's the
5 best thing.

6 We think that consumers need to know right up
7 front, first point of contact, are you advertising a
8 product and you're enticing consumers to come buy this
9 product because you're offering a rebate? Well, right
10 there and then in that advertising moment is when you
11 should tell consumers what's going to be involved in the
12 rebate process to get the full value of what is being
13 offered to them.

14 Obviously we spend a lot of time educating
15 consumers on a whole host of issues, but importantly, it
16 needs to come from many sources. And the marketer in
17 many cases is in the best place to give the most
18 effective consumer education on the front end.

19 MS. FAIR: How would you respond, Ed or Jeff,
20 about the role of the marketer in consumer education?

21 MR. KABAK: Well, I think the marketer
22 certainly can get actively involved, even to the extent
23 of using his website to publish simple guides as to how
24 to respond to rebates. But I think ultimately even
25 beyond that I don't think the process is necessarily that

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1 cumbersome. One of the things that came out of, I guess
2 Tim Silk's presentation, is one of the main reasons why
3 rebates aren't fulfilled is procrastination on the part
4 of consumers. That doesn't excuse the failure to make
5 appropriate disclosure when those kinds of situations
6 take place.

7 But education is certainly something that can
8 be done in little -- even in pamphlets or in a website
9 posting, and I think PMA from its standpoint will
10 probably do the same kind of thing on its website.

11 MS. FAIR: How many, how many consumers go to
12 the PMA website, though?

13 MR. KABAK: You know, we have an educational
14 foundation, so we are thinking actually of doing it, you
15 know, going forward with actually a separate educational
16 website. We do have the Consumer Week website as well,
17 for National Consumer's Week, so we do have already a
18 consumer website to deal with coupon counts, we deal with
19 the coupon counts. Yeah, we're a trade association as
20 well.

21 So, yes, the best solution for education really
22 is self-reliant publication by the marketers I think, and
23 that could be done in any number of a kind of ways.

24 MR. GREENBAUM: I would say that consumer
25 education is absolutely consistent with what advertising

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1 is about. Advertising is consumer education. And
2 advertisers haven't done their job properly if they
3 haven't clearly and accurately told consumers what it is
4 they're going to get, and what the terms are, what the
5 terms they're going to have to follow in order to get
6 those things.

7 So what I would say is this is the third event
8 that I've been to this week, and no one has asked the
9 question that was asked at the other two events, which is
10 how small can I make the disclosures in my advertising.
11 And, you know, the response is as you would expect, which
12 is well you have to educate consumers, are consumers
13 going to see the disclosures, are they going to read
14 them, and are they going to understand them. And I think
15 that consumers don't need to look to other places to
16 other organizations to educate consumers, they actually
17 have to do it in the advertising.

18 And I think the thing that I would say that's
19 absolutely critical, and one of the speakers but I can't
20 remember who said it, which is you got to listen to what
21 the consumers are saying. One of the pieces of advice
22 that I give clients is read your consumer complaints,
23 aggregate your consumer complaints. If people are
24 complaining that they're not getting their products on
25 time you got to look at, you got to look at that problem.

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1 If you're seeing too much, if you're seeing people not
2 getting their mail-in rebates you got to fix the problem.
3 I think your goal has to be improve the program each time
4 you do it. And if that means making your offers clearer,
5 if it means changing your offers, that's what you have to
6 do.

7 And I think that companies are working toward
8 that, because the reality is what my clients tell me is
9 that if a rebate program doesn't work properly they don't
10 have happy consumers and it causes problems. Certainly
11 the statistics show that as well. So I think programs
12 like this are excellent for helping marketers understand
13 what the options are and what some of the problems are
14 that consumers are running into, and I think it will
15 help -- this day should help many, many people adjust
16 some of their rebate terms to make them simpler.

17 MR. KABAK: I mean particularly if you want
18 good customers, you don't want to give any consumer a bad
19 experience because they're not likely to come back, not
20 likely to come back to the same program. But it's also
21 clear that consumers do enjoy rebates and manufacturers
22 need them for a number of reasons, they're very, very
23 valuable. I think the Hewlett Packard presentation made
24 that clear, and basically it adds a tremendous amount of
25 variety to the marketing mix, it's very, very helpful

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1 with respect to trial offers of new products, and it's
2 particularly helpful when you're considering other
3 products as well that are somewhat challenged or
4 otherwise.

5 There are valid business reasons on both sides
6 to continue a beneficial rebate relationships, and you
7 don't want to basically lose your best customers by doing
8 a bad program.

9 MS. FAIR: We've heard about bad programs,
10 Hal's phrase, "brand suicide." So it seems that we've
11 heard from real experts that the key is to give consumers
12 the information they need in a clear and conspicuous way.
13 Everybody seems to agree that's the right idea, and yet
14 we still have thousands of complaints from consumers. So
15 what needs to be done? What's the solution to the
16 problem about the kind of information to be given in the
17 ad?

18 MR. GREENBAUM: I think one thing I would say
19 is that lawyers have to start to be a little bit less
20 afraid. And what I mean by that is that often marketers
21 today feel like they need to include more information in
22 their disclaimers. And one thing that I do when I get an
23 ad is I frequently cross-out disclaimers and I would say,
24 look, a big block of text is probably not going to do you
25 a lot of good, so let's look at this and make some hard

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1 decisions about what consumers really need to know.
2 Often cases you can cut a disclaimer in half and suddenly
3 turn it into something that is actually understandable to
4 consumers.

5 So I think the first thing I would say to a
6 marketer is take a look at your disclaimers, are people
7 really going to be able to wade through it, and if not,
8 take a hard look and start to cross some things out,
9 start to eliminate, find the right time to disclose each
10 piece of information. The point that Linda made in her
11 presentation about the best practices was there's no one
12 right answer about when information needs to be
13 disclosed. It's going to depend on the type of terms and
14 the type of offer, and I think you have to take a hard
15 look. If you take a one size fits all you create this
16 giant long paragraph that, you know, sort of makes you
17 feel better that you've included every possible scenario
18 that could possibly need to be included, you're going to
19 have a disclosure that's probably not going to make
20 anyone happy.

21 So I say start with less, and really figure out
22 what are the critical things that consumers need to know.

23 MS. GARCIA: I think the governing principles
24 have to be that the disclosure must be simple, it must be
25 clear, and it must be accurate. And if you use those as

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1 your guiding principles I think you will come to the sort
2 of conclusion that Jeff is suggesting here, and that is
3 you're making sure that people know what they should know
4 in a way that they can actually understand it. Otherwise
5 there's really no point to even writing the words if
6 they're not words that can communicate meaning.

7 MS. FAIR: I think one thing that crossed my
8 mind, I know a number of you in the audience were present
9 about five or six years ago at an event called
10 'Disclosure Exposure' that the Federal Trade Commission
11 put on with the National Advertising Division of the
12 Better Business Bureau. And we gave kind of a bad
13 example of an ad and had three leading ad agencies and
14 their attorneys redo it. And I thought the interesting
15 thing that they raised is the minute you start talking
16 about what should be in the big block of text you're kind
17 of on the wrong path already. That the best way to do it
18 is to incorporate it into the offer itself, whether
19 that's fonts, whether that's color, how that's done. But
20 how do you get the point across that disclosure doesn't
21 have to be done at the bottom of the page or in a
22 superscript, how do you convey that?

23 MR. GREENBAUM: I think one thing I would say
24 is that just incredibly revealing study that the FTC did
25 in connection with the review of the endorsement guides.

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1 And for those of you who haven't read it, I suggest you
2 take a look at the studies, it's on the FTC website.

3 SPEAKER: Is that an endorsement?

4 MR. GREENBAUM: It's more of a reference than
5 an endorsement. But what the study showed, and it was
6 really unbelievable, it was in the context of some weight
7 loss ads and some business opportunity ads, and
8 essentially the test ads had a disclosure in 14 point
9 type in red in bold in the center of the ad, so, red,
10 bold, center of the ad, not the bottom center, the center
11 of the ad, and it was 14 point type. And what the study
12 showed is that this disclosure was not effective.

13 So I mean unless all of you out there are using
14 14 point, red, bold disclosures in the center of your ad,
15 you know, you have a potential issue out there.

16 So I think what I would say is that, Lesley,
17 the point you're making is absolutely right. Which is
18 that disclosures often aren't doing the job, and we have
19 to look very closely at better ways to communicate that
20 kind of information to consumers. And certainly the
21 point that you raised is a good one, and it's one that I
22 work with clients a lot about, which is how can we make
23 the disclosure part of the offer? How can we tell people
24 that instead of sort of communicating a message to people
25 in two separate places, how can we make it all part of

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1 one thing? And I think that those are difficult things
2 to do, and it requires the lawyers getting involved early
3 on in the process, and it requires some give and take on
4 the creative side, and it may require, you know, some
5 additional education in whatever forms to convince
6 marketers that sometimes that's what's going to be
7 required. But I don't think it's easy.

8 MS. FAIR: We've had a number of suggestions
9 about possible solutions on the forms that attendees
10 turned in. Let me just throw these out and whether you
11 think this is a move toward a solution.

12 One proposed suggestion is more law enforcement
13 actions at the federal and state level. How much effect
14 do you think those have on changing company's policies?
15 Ed?

16 MR. KABAK: I think if you're a legitimate
17 company, as most of the companies are, and is engaging in
18 any kind of commercial business, and you're a fly by
19 night company, it has some effect. But really if you're
20 a fly by night company, basically, it has a bigger effect
21 to the extent that the people are caught. But I mean law
22 enforcement is really not the solution. It's important
23 that the FTC enforce Section 5, it's clearly important
24 that they use the existing tools where there's empirical
25 evidence of violation. But I don't think law enforcement

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1 is a solution by itself.

2 What's important, really, is the kind of self-
3 regulatory standard, and education, and compliance, and
4 better knowledge by all the parties.

5 I just don't see it as a solution to deal with
6 the problem. Because I think even in areas where there
7 has been enforcement in many cases there's not
8 necessarily intentional misrepresentation. But there are
9 errors, and there are mistakes, and the FTC is a very
10 judicious arbiter of when and under what circumstances to
11 bring cases.

12 So I don't think using an increased law
13 enforcement standard is necessarily the way to go.

14 MR. GREENBAUM: I think the thing I would say
15 is certainly the law enforcement that's happened has been
16 tremendously effective and influential to marketers, and
17 I think that we hear you. I think that when the FTC
18 takes action, whether it's a report, or whether it's a
19 workshop, or whether it's a new guide to industry that's
20 issued, I think we really hear you and we really try to
21 make adjustments based on that, and try and learn from
22 it. So I think that what the FTC's doing is working, and
23 I think that this workshop -- or at least it's the
24 beginning of a process that is working. And I think that
25 something like this now is going to have some effect,

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1 it's going to take some time for industry to digest it
2 and work on technological changes, work on just different
3 kinds of approaches. But I think it's a good productive
4 process.

5 MR. KABAK: One more point. Coming from many
6 years of being General Counsel different places, I mean
7 when the FTC goes after a company, a significant company,
8 or even a publically traded company and obtains a five to
9 ten million dollar judgment from it, people pay attention
10 to that. Lawyers and outside counsel usually walk around
11 corporations with a news clip of that in their pocket.
12 It's a very, very effective remedy when you're advising
13 clients.

14 MS. GARCIA: From our perspective, law
15 enforcement actions act as a deterrent to the sorts of
16 practices that really take advantage of consumers. It
17 sends a clear message to practitioners that they need to
18 do something differently. So there's an educational
19 component to it as well, as Jeff mentioned.

20 There's also another component that's really
21 important from the consumer perspective. And that is
22 that it creates consumer confidence in the regulatory
23 agencies that are charged with protecting the public
24 around these business practices. And from our
25 perspective that's a really good thing as well.

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1 MS. FAIR: Another thing that's been raised, I
2 guess kind of akin to the nutrition labeling on the back
3 of a can of soup or a can of beans, what about the
4 possibility some folks suggested of some kind of
5 standardized rebate form? Do you think that's part of
6 the solution, not part of the solution?

7 MR. GREENBAUM: I think it's not part of the
8 solution. I think that what we would say is that there's
9 a lot of different kinds of companies out there doing a
10 lot of different kinds of offers with a lot of different
11 kinds of products. I think the FTC has long believed in
12 not stifling creativity, but basically using Section 5 as
13 a way to look at practices and determine whether
14 something's either deceptive or unfair. I don't think
15 that, you know, either self-regulatory organizations or
16 the government should -- needs to at this point set-up a
17 nutrition label. I think there's lots of different ways
18 that we can accomplish a goal of clear communication, and
19 I think we have to continue to explore that.

20 MR. KABAK: I would just say the one size fits
21 all does create a problem in a lot of areas, including
22 the area of services, particularly when you're selling
23 services, not just products, it's very, very complex.

24 MS. GARCIA: I think even if you're not moving
25 towards standardized forms or language there should be an

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1 effort to move towards standardized simplicity, and
2 easing conditions for consumers in order to redeem their
3 rebates.

4 MS. FAIR: Some other people suggested FTC
5 guidance, possibly rule-making. What about that as a
6 solution, a possible solution to the problem?

7 MR. GREENBAUM: I think this may be a good time
8 to mention, again, sort of Connecticut and Rhode Island.
9 I think that there is certainly concern on the industry
10 part to the extent that the states started to continue,
11 continue to get into the business of adding new rebate
12 restrictions, new rebate requirements, that are
13 conflicting with other states, and are conflicting with
14 general industry practice. Because what you're going to
15 end up with is companies being forced to add more
16 disclosures and to make their offers more complicated.

17 And one of the questions that Eileen raised
18 that I don't think we got an answer to, which I wanted to
19 at least give my point of view on, which is that I think
20 that the effect that we've seen in Connecticut and Rhode
21 Island is that those statutes have in fact hurt
22 consumers. Because of companies reacting by providing
23 instant rebates, you know, you can't turn a nation-wide
24 program into a 48 state plus District of Columbia program
25 that easily, so the easiest thing to do is simply to void

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1 Connecticut and Rhode Island.

2 So I think that the concern here is that by
3 inconsistent regulation by various states it's really
4 going to end up, there's a significant concern and I
5 think we've already seen some evidence of that, of these
6 offers not becoming available to consumers. So I think
7 that the more easy we can make it for marketers to
8 communicate this information in a simple way, and in a
9 way that works the same everywhere we go, is going to
10 make things easier --

11 Certainly encouraging other states not to add in
12 things that are inconsistent. The sort of legislators
13 that I've spoken to on this issue have really understood
14 this idea. And I know that in some states they've
15 specifically not gone down this road because they
16 understand that prohibiting this sort of disclosure of
17 the after rebate price is going to hurt consumers,
18 because these offers are just not going to be made
19 available to them.

20 So I think that, you know, anything we can do
21 to help marketers do there -- make these offers in a
22 consistent way, and give them easy guidance I think is a
23 good one.

24 MS. GARCIA: I think if you have some standards
25 promulgated by the FTC regarding what should happen with

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1 rebates and if they're effective standards, I think
2 you're going to see less movement in the states to try
3 and pass laws to deal with the problems that arise in the
4 states. So to the extent that the FTC can take a
5 leadership role in creating standards that are protective
6 of consumers but at the same time leave room for the
7 marketplace to work, I think you're going to see a
8 positive effect in the states.

9 Now, that being said, if the states perceive
10 that nothing is being done on any other level to protect
11 consumers, and the concerns are very real, the states are
12 going to step in, and you are going to see perhaps
13 inconsistent methodology of promulgating laws in
14 different states, a patchwork quilt of law-making. But
15 that's happening for a reason. That's happening because
16 the problems are real and no one else is addressing them.
17 So to the extent that you can take care of that, I think
18 everyone will be in a better place.

19 MS. FAIR: What form would you see that kind of
20 guidance or advice coming in, Norma?

21 MS. GARCIA: I think the FTC should set
22 standards for what should happen with respect to how the
23 rebates are advertised, how they're delivered, the
24 systems that are required for consumers in order to
25 redeem those rebates, the processes by which those

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1 rebates must be fulfilled, the form in which those
2 rebates must be fulfilled. I mean the idea of getting a
3 check in the mail that looks like a piece of junk, I mean
4 that's really bad, I've received that and geez I do this
5 for a living. I almost threw mine away. And I can
6 imagine a lot of people do. And there must be some ways
7 that can be developed to protect consumers at every stage
8 of the game and still provide room for this to be a
9 viable industry.

10 MR. GREENBAUM: It sounds to me a little bit
11 too soon for that. I think that certainly this workshop
12 has been an important and useful dialogue. And I think
13 we should look to industry to react and to develop its
14 own guidelines, and to sort of track that and see how
15 it's going. I also think technology is catching up. The
16 fact that we've seen these incredible online fulfillment
17 systems and how incredible they are, I think it's going
18 to take some time for those things to roll out and be
19 made available to more and more companies. So to me I
20 look at that and I go we shouldn't develop a system that
21 starts to regulate, to the extent that it is broken,
22 regulate a broken system when the system is in an
23 incredible state of flux right now. And chances are
24 mail-in rebates are going to look very, very different a
25 few years from now than they do today.

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1 So I think that what we're doing here is a
2 positive step. Letting regulations, letting self-
3 regulation have a chance, as Linda mentioned in her
4 presentation, is a good one. And I also think let
5 technology have an effect, because it think that it will
6 have a big one.

7 MS. GARCIA: Well, rebates have been around for
8 a while and there have been many opportunities to self-
9 regulate, and unfortunately those haven't always been
10 successful. To the extent they have been successful,
11 developing rules and guidelines really would be
12 consistent with those best practices. So those companies
13 that are already engaging in those practices really have
14 nothing to fear by the passage of or adoption of
15 additional rules.

16 There's plenty of room in this for everyone. I
17 mean obviously technology will evolve, and the FTC
18 hopefully will be very cognizant of that and leave room
19 in whatever rules they create to add some flexibility for
20 those sorts of developments. But self-regulation from
21 our perspective hasn't worked, and to the extent that it
22 has worked it shouldn't conflict with any strong rules
23 that are put in place by the FTC.

24 MR. KABAK: I would say going back to the same
25 issue that it's important to give industry always a

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1 chance to self-regulate before any consideration is given
2 to the imposition of particularly a federal standard.
3 And particularly where, as here, it seems clear from the
4 standpoint of protecting against consumer fraud and maybe
5 improper procedures as well by certain manufacturers, the
6 paperless kind of way of redeeming rebates may be a
7 very -- a solution to a lot of people's problems.

8 I don't think it's a good idea to go to a
9 federal standard. I don't think this is a situation like
10 we had with CAN-SPAM, where there are other reasons to
11 federalize or preempt any states. I think the trend in
12 laws of the states has been sort of, sort of a tendency
13 to slowly grow in some areas. But I think the technology
14 will probably make things happen a lot faster and in very
15 simple ways will clear up a lot of the issues, along with
16 self-regulation. I don't think this is an issue in terms
17 of state laws like gift cards, where there's clearly a
18 major desire on the part of all states to eliminate
19 dormancy expenses and reduce and deal with expiration
20 dates. It doesn't have the same kind of impetus. I
21 think that it's much better to let it evolve in a natural
22 way.

23 MS. FAIR: I'm interested in your comment,
24 everyone's comments about electronic submissions. And
25 certainly we've seen some great suggestions and some

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1 intriguing ideas. What do we do right now, however, for
2 the 20 percent of Americans who are not online, typically
3 more likely to be older Americans or lower income
4 Americans?

5 MS. GARCIA: One way to deal with that is by
6 offering a rebate right at the cash register. That's the
7 great equalizer, right? It doesn't matter whether you
8 have a computer at home or if you even know how to use
9 one, you're going to get your rebate right when you
10 purchase that product. So that's one way to do it.

11 Another way perhaps is to have the next best
12 thing, which might be a kiosk located in a store that the
13 consumer can then go to, punch in a code, get the rebate
14 check. This is one way to certainly diminish the digital
15 divide.

16 MR. GREENBAUM: I think the one -- a couple
17 concerns that I have, the first that I'm concerned with
18 any steps we take that is going to take -- that are going
19 to take away the value of rebates to consumers who you're
20 getting the greatest value to them. I admit that I
21 bought an expensive electronic product recently and it
22 had a fairly long rebate period and I said I'll get to
23 it, I'll get to it, and I admit that I forgot to send the
24 rebate form in. So, you know, I think that maybe I'm not
25 the one, I'm not elderly, and I have online access, so

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1 maybe I'm certainly not your target, but I do think that
2 by adding all of these requirements, if we get in the
3 business of telling marketers they have to do it a
4 certain way and we're going to make it more expensive,
5 we're going to make it more difficult, and we're going to
6 tell them they only can provide programs where there's a
7 rebate in store, we're just going to see fewer rebates
8 available.

9 So I think that the answer is looking at what
10 the problems are, encouraging companies to see where
11 rebates are not happening, where consumers are not
12 getting them, where the breakage is, where the slippage
13 is, look at those problems and try to address those
14 problems. They're going to be different for every
15 company, they're going to be different for the types of
16 products that are being sold, and encourage companies,
17 continue to encourage companies to sort of address those
18 problems. Because I think you're right, an online
19 solution is not going to ever, at least in the
20 foreseeable future, be the only solution, so we're going
21 to have to continue to address ways to make rebates
22 clear. And I think we saw some really helpful and
23 impressive examples today of ways that can work.

24 MS. FAIR: Well, certainly our goal is to stop
25 deceptionage [sic] through disclosureage [sic].

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1 [Laughter.]

2 MS. FAIR: But I think that raises the issue.
3 I think Ed, he used -- he dropped the F bomb there,
4 federal legislation. Some companies say, my gosh we have
5 a crazy quilt of state by state legislation. Other folks
6 are saying the response to that would be handling things
7 at a federal level. How do you look at the prospect of
8 whether federal legislation would be helpful or harmful
9 in coming toward a solution?

10 MR. KABAK: How do I look at it? I don't think
11 it necessarily would be helpful. I think it's basically
12 there are plenty of laws on the books already. The FTC
13 has more than enough statutory authority. So I don't
14 think it needs to go beyond that with respect to its
15 enforcement against companies that violate the law
16 concerning rebates. I don't see it as necessary at all,
17 and basically I don't think the state laws are that much
18 yet a crazy quilt pattern that makes doing business
19 impossible. Certainly to the extent that there are
20 isolated cases where Rhode Island and Connecticut are
21 examples, it does make doing business a little more
22 difficult, but that's no reason to have a federal
23 standard at this point.

24 MS. GARCIA: Well, from our perspective
25 assuming that we're talking about an effective federal

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1 law that protects consumers, isn't it a good thing that
2 consumers in California have the same protections as
3 consumers in New York or Connecticut? I mean that's not
4 a bad approach. So obviously we have to look at what
5 sort of federal proposal we're talking about here. But
6 that's not necessarily a bad approach.

7 MS. FAIR: Well, I have a few final questions
8 at the end, but I want to give the audience a chance to
9 ask questions since we have such esteemed experts.

10 I also get to channel my inner Oprah, so let me
11 get the microphone, and trust me, I do have an inner
12 Oprah, to see what questions the attendees have for the
13 three experts we have on the panel.

14 Questions? Dr. Silk?

15 MR. SILK: Maybe it's not fair, it's not really
16 a question. But I think from a behavioral perspective,
17 and I'm not condoning legislation either way, I look at
18 behavior very neutrally. There's a real opportunity to
19 embrace a standard. It's not a coincidence that stop
20 signs look the same in every state. There's an
21 opportunity here to help the industry. You're allowing a
22 few bad apples to pollute the name of rebates. I don't
23 believe there will be consolidation of standards because
24 there's no consolidation in the industry, there's too
25 many players. And so to say that there's been no chance

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1 to give them a chance to self-regulate, I don't even
2 think they've had a chance yet, it's not consolidated.
3 So like how long do we wait for that to happen?

4 So I know that you have to give freedoms to the
5 firms. I want to give freedom to the firms. But there
6 is a behavioral advantage for all consumers to be able to
7 identify is this a rebate program. That's what you want
8 to do, you're trying to target these promotions.

9 And I don't think the instant rebate is part of
10 the issue, because rebates are a price discrimination
11 tactic, and there's nothing wrong with that, we have
12 senior's discounts. So to go so far as to say should
13 everyone be redeeming, that's not the issue, it's up to
14 the consumer's choice, we have to allow them to behave.

15 But I think there's an opportunity here that if
16 you were to standardize the visual format to some extent
17 that would help both the firm and the consumer side. So
18 if you could have responses to that.

19 MR. GREENBAUM: All I can say is I thought your
20 presentation this morning was absolutely fascinating, and
21 the next time I get a call from the western region I'm
22 bringing you as an expert to defend me that my
23 complicated offer that only had seven days to redeem was
24 actually better for consumers.

25 I think, I think the point is that these are

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1 complicated issues and there isn't one obvious solution.
2 And I think that your research shows that we have to
3 really think very, very hard, and we have to sort of let
4 people explore various solutions. Because certainly your
5 research would show something very, very different than
6 what would be what people would expect laws to say.

7 So I think that we have to -- this isn't the
8 moment I think to legislate. There may come a time.
9 There may be sufficient reasons to do so. But certainly
10 Section 5 gives the FTC all the authority it needs to go
11 after the bad actors. But at this point I think it's
12 just not clear what any of that would say.

13 MS. FAIR: Other responses from Norma or Ed on
14 Dr. Silk's point?

15 MR. KABAK: No. I would agree, though, and
16 particularly since some of the material that was in the
17 presentation was really counter-intuitive, you have to
18 let the facts play out for themselves. And I don't see
19 any need for a federal standard at this point. I think
20 ultimately it will place sort of too heavy a hand on the
21 shoulder of the industry and probably hurt the consumer
22 in the end.

23 MS. FAIR: Other questions?

24 MS. GARCIA: I found your comment quite
25 interesting, and I really appreciated the example you

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1 gave of the stop sign, and the reason why it's effective
2 is because it actually communicates what it needs to
3 communicate. So to the extent that rebates can be
4 standardized to communicate essential information to
5 consumers that's a good thing.

6 MS. FAIR: Other comments or questions? And if
7 you could identify yourself?

8 MS. BIXLER: Diana Bixler. And I'm a marketing
9 lawyer. And I would say that one of the things that
10 rebates communicates to consumers, when you use that
11 term, is that they need to submit something afterwards to
12 obtain the dollar value benefit of that. So to the
13 extent that you're suggesting that all, quote, rebates
14 should be payable at the point of purchase you're
15 essentially saying there will be no rebates, and
16 basically removing that option from the option to
17 promotional incentives that marketers have always
18 enjoyed.

19 The idea, I mean absent saying instant rebate,
20 everybody always assumes, or I hate to put thoughts into
21 people's minds, but increasingly recently states have
22 been adding a statutory definition of rebate, and in
23 every case it calls for submission of something after the
24 purchase to obtain the incentive to obtain the
25 promotional value. And should you have to give it to

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1 them at the point of purchase you really, you know, how
2 you account for it and who actually funds it behind the
3 scenes is irrelevant, because we're talking about the
4 message to consumers, and that's telling consumers there
5 won't be any rebates or you're changing the definition of
6 it. And as Jeff just noticed, it will reduce the values
7 that are offered in those rebates.

8 MS. FAIR: Comments from the panel?

9 MR. GREENBAUM: I think maybe we should go back
10 to that slide, which I know conveniently was removed from
11 the screen.

12 MS. FAIR: No, that's strictly our security 15
13 minute cut-off that you saw on FTC computers. Good
14 advice for everybody, but nothing --

15 MR. GREENBAUM: But if you recall, the number
16 one consumer the number one problem identified by this
17 survey, admittedly unscientific, was consumer error. I
18 think we do have to also react to the fact that look this
19 is not all just a marketer problem, and that sometimes
20 consumers are just not going to follow instructions, and
21 they're going to make mistakes, and they're not going to
22 do it right, and they're going to miss deadlines and
23 they're not going to cash checks. And that is not
24 something the marketer's responsible for. And you could
25 put the Surgeon General's warning on the side of the

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1 package but there's still going to be people that are
2 going to smoke.

3 So I think it is important to realize that
4 there are limits to what marketers can do. And we can be
5 reasonable and we can be clear about our offers, and we
6 can look to make them better and clearer and easier to
7 redeem, but at some point we're going to have to say to
8 consumers you also have to take -- you also have to be a
9 partner in this enterprise and take some responsibility
10 for reading the terms of the offer and complying with
11 them.

12 MS. FAIR: But considering the definition of
13 deception under Section 5, is what reasonable consumer
14 interpretation is, isn't the fact that consumers are the
15 ones being confused by that say more about the offer than
16 about the consumer?

17 MR. GREENBAUM: Well, I guess, of course, you
18 know, it's an objective standard as opposed to the way
19 consumers are actually reacting. And so I would say
20 objectively when we look at an offer, you know, is this
21 something that a reasonable consumer should be confused
22 by? I think that there's a lot of things that the
23 majority of Americans do and believe that I wouldn't
24 consider to be reasonable. So but that's really not the
25 purpose of this, of this program today.

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1 But I do think it's not just about the
2 empirical data, it's about what would a reasonable person
3 looking at that offer and that ad believe. And I think
4 that that's in some level equally important, if not more
5 so, because that's the legal standard, than what
6 percentage of the breakage there is.

7 MS. GARCIA: What happens when the consumer
8 tries to follow instructions that are just so complex
9 that no one can figure them out. I know of a case where
10 an individual was trying to redeem her rebate, she
11 couldn't figure it out, she went back to the store to get
12 their advice on how to do it, they thought they gave her
13 the right advice, and guess what, it was wrong, she
14 couldn't collect. This happens.

15 So when we ask ourselves, our consumers of
16 course consumers have an obligation to follow
17 instructions. Everyone has that obligation. But what
18 instructions are we giving them? Are they instructions
19 that the reasonable consumer can follow? I certainly
20 hope so, because if not they start complaining. And when
21 they start complaining that adds heat under you, and
22 that's not a good thing for you either.

23 MS. FAIR: We have a question here. If you'll
24 identify yourself?

25 MR. WOODWARD: Hi, Greg Woodward, IMR Group. I

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1 just wanted to make two comments. First of all, I agree
2 completely with the concept that technology is really the
3 solution. And the second piece that the industry should
4 regulate itself, and I think that's important.

5 The number one thing is to be able to make the
6 consumer happy while allowing the manufacturers to
7 benefit from the value of breakage, or the rebate versus
8 the instant discount. We've developed that solution.
9 And basically you mentioned something about the
10 microphone, you mentioned an in-store kiosk and that's
11 what we're going on lines with. We're preparing to
12 launch an online solution and an in-store solution, which
13 is real time, which operates as a service to the consumer
14 for a fee, like a Coin Star machine would. This model is
15 designed to stay ahead of legislation in the areas of
16 liabilities and things like that. More importantly, it's
17 protected by an international portfolio of patents and
18 also can be implemented in the retail space without
19 modifying any existing systems.

20 So there's a technology solution.

21 MS. GARCIA: Can I ask you a question? What
22 are you fees like?

23 MR. WOODWARD: We don't charge fulfillment fees
24 to the manufacturers.

25 MS. GARCIA: How about the consumer?

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1 MR. WOODWARD: Eight percent.

2 MS. GARCIA: Eight percent of the total rebate?

3 MR. WOODWARD: Coin Star's 8.2. It's an option
4 to mail it in now. You can get a hundred percent on a
5 store gift card and the retailer pays the fee. So this
6 is something we started talking about at CES in January,
7 and hopefully the technology, hopefully your solution
8 will happen, the technology will solve the problems.

9 MS. GARCIA: Thank you.

10 MS. FAIR: Another question here?

11 MR. LAVERTU: Hi, my name is Fred Lavertu and
12 I'm from (inaudible). And I hope you'll allow me to be
13 your (inaudible) to your inner Oprah. It's a joke, I'm a
14 married man, I'm taken.

15 [Laughter.]

16 MR. LAVERTU: About the notion that the -- and
17 my wife will read this, true, and, hi, Suzy, by the way.
18 I'll be home tomorrow.

19 Given the comments that, and I'm glad to see
20 the panel, but anyways, Hal had said earlier that most of
21 the practices that we've been talking about, and I work
22 for (inaudible), we see complaints about these practices.
23 To give some context we're the (inaudible) to the FTC.

24 But in any event, given that Hal's comment that
25 a lot of these practices amount basically to brand

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1 suicide, and yet they still go on, how realistic is it to
2 expect the industry to regulate itself when the practices
3 themselves are first of all hurting themselves but still
4 go on, but obviously there's a profit motive behind it.
5 So how can we, or what can we or the industry offer to
6 do, or prepare to do, to regulate itself?

7 MR. GREENBAUM: You know, I think those are
8 obviously great questions, and I think that there are no
9 easy solutions. And I think this is one step among many
10 steps to try to look for a solution. I mean certainly
11 you can post speed limit signs on the highway, but unless
12 Lesley's driving you to work in the morning the federal
13 government is not going to ensure that you don't go over
14 the speed limits.

15 So I think that there is not one easy way to
16 solve the problem and I think that federal legislation or
17 a patchwork of state legislation is not going to solve
18 the problem either. We're still going to have problems.
19 We're still going to have offers that are confusing. And
20 I think that the better solution is certainly this kind
21 of discussion, education, and looking to technology to
22 sort of enable marketers in a cost-effective way to make
23 the consumer better.

24 MR. LAVERTU: If I may just pursue my answer.
25 While it may be true that federal regulation is not the

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1 answer, and given that it's a U.S. problem I'm not going
2 to comment on it, but what -- you've sort of answered my
3 question, but what can the industry do? I mean I realize
4 that you cannot stop me from driving my car 200 miles an
5 hour if I feel like it, but as the people who are driving
6 the car, what do you propose to do to help solve the
7 matter? In other words, are you going to slow down? Or
8 how are you going to do it.

9 MR. GREENBAUM: Well, you know, I'm not, look,
10 I'm not here representing a specific company, so I don't
11 think that I actually have specific proposals that I want
12 to make on behalf of anyone other than to say that I
13 think that these kinds of issues are the part of the
14 discussions that companies are having. Companies really
15 truly are looking for solutions and they don't want
16 unhappy consumers. And I've never once had a discussion
17 with a client ever where they said what can we do to make
18 people not redeem this offer. And, you know, oh what
19 great news, suddenly this rebate offer didn't cost us
20 anything.

21 I think that the reality is these companies
22 want repeat customers, they don't want the brand suicide.
23 But I think the reality is is that change takes time and
24 change is often very expensive, especially when you're
25 talking about the redesign of big company systems and

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1 websites and all that. But I think we're moving in the
2 right direction. And I think some of the changes we've
3 seen today are really incredible examples of what can be
4 done, and I think that this is just the beginning of
5 seeing a lot more of that, at least hopefully it is.

6 MS. FAIR: Time for one more question.

7 MR. GLASSER: Hi, Roy Glasser. I spoke before.
8 I'd like to say first that as a consumer I think that
9 something needs to be done. The regulation, I think
10 there needs to be some kinds of it. But as far as the
11 forms go, I think if they were templates and the
12 manufacturers could say well we'll pick this, this, and
13 those conditions from it, and the wording was understood,
14 they could see the totality of what they might choose,
15 and they could then pick whatever they want to be
16 smaller. But there has to be something. This concept of
17 getting a rebate in 21 days, that company's been telling
18 me that since 2002, and I when I get a rebate in 21 days
19 the other 10 rebates take a lot longer than it says on
20 paper.

21 So obviously things need to be done. And I
22 think that complete government regulation is probably not
23 the right way to go at this point, but there need to be
24 guidelines and the crooks have to be gotten out of it.

25 MR. GREENBAUM: Yeah, I just think there's one

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1 good thing to say there, which is this is not about
2 there's always going to be a small percentage of
3 companies that are the bad guys. This is not about the
4 bad guys. And we don't want to develop a system of best
5 practices or legislate based on the sort of bad out-of-
6 line acts of a few. We have to look at those people are
7 going to be dealt with, there's sufficient authority both
8 at the federal and state level to deal with it. And
9 really what we're looking at here is for the people who
10 are trying to do it the right way and who are looking for
11 solutions how can we best help them to do that.

12 MR. KABAK: I would just say self-regulatory
13 actions have taken place in a lot of industries, you've
14 got (inaudible), you got NAD, Children's Food Initiative,
15 and they need to be followed and dealt with, but they are
16 an intelligent way of motivating people who have a real
17 business and economic interest in proceeding fairly with
18 consumers and honestly in a reasonable way to continue to
19 do business with the consumers that also like this
20 process, and without necessarily having the heavy hand of
21 regulation and federal regulation brought down upon the
22 industry.

23 MS. FAIR: We have, I'm sorry, Norma?

24 MS. GARCIA: One last comment on that.

25 Developing laws or regulations that are designed to get

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1 at the practices of even just the bad actors, that's a
2 good thing. If you're doing the right thing these are
3 not going to impact you at all. They're going to clean
4 up the industry, they're going to create greater consumer
5 confidence, and that's all positive.

6 MS. FAIR: I'm sorry that we have advertised
7 that we're finishing at 4:30, we're going to make that a
8 truthful and substantiated claim. But Matt Gold will
9 mention how to put additional material and information in
10 the record, and how to get everyone's point of view
11 mentioned.

12 I'd like just one last question for the
13 panelists. Assume this is a magic wand. It was paid for
14 with lowest government contract bid, so that's what you
15 get. Norma, if you have the magic wand what one change
16 or one activity, what would you like the result of this
17 event today to be, if you had if it was your choice,
18 where should we go from here?

19 MS. GARCIA: Consumer's Union believes that
20 rebating at the cash register is the best possible
21 solution for consumers. That's our wish.

22 MR. KABAK: If I had my wish I would wish for
23 the continued acceleration of technology which would
24 solve a lot of these problems, and for the creation of
25 appropriate self-regulatory standards to take place, and

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1 for the consumers themselves to be better educated and
2 learn to read better.

3 MR. GREENBAUM: I think this is a very, very
4 positive day, I think we got a lot of information, I
5 think that a lot of useful information was shared. And I
6 think it should be a continuing dialogue and we should
7 continue to learn from each other. And we should
8 continue to have these conversations. And we should
9 revisit them in the not-too-distant future and see where
10 we are and see what progress is being made.

11 MS. FAIR: Thank you very much. Thank you
12 speakers. Thank you all.

13 [Applause.]

14 MS. FAIR: And the last word goes to Matthew
15 Gold.

16 MR. GOLD: I'd just like to thank all our
17 panelists and moderators, and especially our audience. I
18 don't think I've ever been at an event like this where
19 there's so little afternoon drop-off. It's very, very
20 impressive.

21 Please continue to check out our website. I
22 apologize, I don't have the URL off the top of my head.
23 But it's the Rebate Debate website it's accessible
24 directly from www.FTC.gov. Right on the home page there
25 is the logo for this event, and it will lead you to the

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1 web page. That web page will remain active for the
2 foreseeable future.

3 Like I said, all the Power Point presentations
4 will be up in the near future, as will the transcript of
5 the event once it's ready.

6 And most importantly, the email address that
7 many of you used to preregister will remain active. And
8 we urge all of the attendees here who were not able to
9 participate, who couldn't comment or question as they
10 wish, to use that email address to submit a comment once
11 you've digested what went on here, and please let us
12 benefit from your thoughts on the matter. So anything
13 you would like to send us by way of that email address we
14 would greatly appreciate.

15 MS. FAIR: What's the email address?

16 MR. GOLD: The email address is:
17 rebatesworkshop@FTC.gov; rebatesworkshop@FTC.gov. But
18 the safest thing to do is to access it from the website
19 because it's a link and it will be sure to get here. But
20 it's the same mailbox that was used for preregistration,
21 and virtually all of you used that.

22 So thank you, again, all, for coming.

23 [Applause.]

24 (A D J O U R N E D)

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I, V, Oliver, a duly designated transcriptionist, do hereby declare and certify under penalty of perjury that the foregoing pages 1 through 224

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1 constitute a true, complete and accurate transcript of
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